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TITLE 6—AGRICULTURAL CREDIT

Chapter IV—Production and Marketing Administration and Commodity Credit Corporation, Department of Agriculture

Subchapter C—Loans, Purchases and Other Operations

[1952 C. C. C. Grain Price Support Bulletin 1, Amdt. 1]

PART 601—GRAINS AND RELATED COMMODITIES

SUBPART—1952 CROP PRICE SUPPORT PROGRAMS FOR GRAINS AND RELATED COMMODITIES

LIQUIDATION OF LOANS AND DELIVERY UNDER PURCHASE AGREEMENTS

The regulations issued by the Commodity Credit Corporation and the Production and Marketing Administration published in 17 F. R. 3521, and containing the general requirements with respect to price support operations for grain and related commodities produced in 1952 are amended as follows:

Section 601.1518 *Liquidation of loans and delivery under purchase agreements* is amended by adding the following paragraph (f):

(f) *Delivery to other than producer's customary shipping point.* Notwithstanding the provisions of paragraph (e) of this section and the settlement provisions of the supplements to this bulletin containing the specific requirements of the 1952 price support programs for wheat, corn, soybeans, flaxseed, oats, barley, grain sorghums and rye, settlement for any such commodity delivered to CCC from farm storage under loan or purchase agreement to an approved point of delivery (in accordance with directions of the county committee) which is other than the producer's customary shipping point will be made at the higher of (1) the support rate for such approved point of delivery, or (2) the support rate for the customary shipping point plus the additional cost of hauling the commodity any distance greater than the distance from the point where the grain is stored by the producer to the customary shipping point.

(Sec. 4, 62 Stat. 1070 as amended; 15 U. S. C. Sup., 714b. Interprets or applies sec. 5, 62 Stat. 1072, secs. 101, 301, 401, 63 Stat. 1051;

15 U. S. C. Sup., 714c, 7 U. S. C. Sup., 1441, 1447, 1421)

Issued this 5th day of June 1953.

[SEAL] HOWARD H. GORDON,
Executive Vice President,
Commodity Credit Corporation.

Approved:

JOHN H. DAVIS,
President,
Commodity Credit Corporation.

[F. R. Doc. 53-5177; Filed, June 10, 1953;
8:52 a. m.]

TITLE 7—AGRICULTURE

Chapter VII—Production and Marketing Administration (Agricultural Adjustment), Department of Agriculture

[1026 (Cigar Leaf-53)-1]

PART 723—CIGAR-FILLER TOBACCO, AND CIGAR-FILLER AND BINDER TOBACCO

CIGAR-FILLER AND BINDER TOBACCO MARKETING QUOTA REGULATIONS 1953-54 MARKETING YEAR

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AUTHORITY: §§ 723.430 to 723.460 issued under sec. 375, 52 Stat. 66; 7 U. S. C. 1375. Interpret or apply secs. 301, 313, 314, 372, 373, 374, 375, 52 Stat. 38, as amended; 7 U. S. C. 1301, 1313, 1314, 1372, 1373, 1374, 1375.

GENERAL

§ 723.430 *Basis and purpose.* Sections 723.430 to 723.460 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended, and govern the issuance of marketing cards, the identification of tobacco, the collection and refund of penalties, and the records and reports incident thereto on the marketing of cigar-filler and binder tobacco during the 1953-54 marketing year. Prior to preparing §§ 723.430 to 723.460, public notice (18 F. R. 2592) of their formulation was given in accordance with the Administrative Procedure Act (60 Stat. 237). The data, views, and recommendations pertaining to §§ 723.430 to 723.460 which were submitted have been duly considered within the limits permitted by the Agricultural Adjustment Act of 1938, as amended.

§ 723.431 *Definitions.* As used in §§ 723.430 to 723.460, and in all instructions, forms, and documents in connection therewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the context or subject matter otherwise requires.

(a) "Act" means the Agricultural Adjustment Act of 1938, as amended.

(b) "Buyer" means a person who engages to any extent in the business of acquiring tobacco from producers without regard to whether such person is registered as a dealer with the Bureau of Internal Revenue. In the case of a person who employs person(s) to negotiate contracts with producers to purchase their tobacco, such person rather than such employed person(s) is the buyer of such tobacco.

(c) "Carry-over" tobacco means, with respect to a farm, tobacco produced prior to the beginning of the calendar year 1953 which has not been marketed or which has not been disposed of under § 723.443. (For 1953-54, there will not have been any tobacco disposed of under § 723.443 since there is no tobacco subject to penalty to carry over into the 1953-54 marketing year.)

(d) Committees: (1) "Community committee" means the persons elected within a community as the community committee pursuant to regulations governing the selection and functions of Production and Marketing Administration county and community committees.

(2) "County committee" means the persons elected within a county as the county committee pursuant to regulations governing the selection and functions of Production and Marketing Administration county and community committees.

(3) "State committee" means the persons in a State designated by the Secretary as the State committee of the Production and Marketing Administration.

(e) "County office manager" means the person employed by the county committee to execute the policies of the county committee and be responsible for the day-to-day operations of the county PMA office, or the person acting in such capacity.

(f) "Director" means Director or Acting Director, Tobacco Branch, Production and Marketing Administration, United States Department of Agriculture.

(g) "Farm" means all adjacent or nearby farm land under the same ownership which is operated by one person including also:

(1) Any other adjacent or nearby farm land which the county committee, in accordance with instructions issued by the Assistant Administrator for Production, Production and Marketing Administration, determines is operated by the same person as part of the same unit with respect to the rotation of crops and with workstock, farm machinery, and labor substantially separate from that for any other lands; and

(2) (i) Any field-rented tract (whether operated by the same or another person) which, together with any other land included in the farm, constitutes a unit with respect to the rotation of crops.

(ii) A farm shall be regarded as located in the county in which the principal dwelling is situated, or if there is no dwelling thereon it shall be regarded as located in the county in which the major portion of the farm is located.

(h) "Market" means the disposition in raw or processed form of tobacco by

voluntary or involuntary sale, barter, or exchange, or by gift inter vivos. "Marketing" and "marketed" shall have corresponding meanings to the term "market."

(i) "Operator" means the person who is in charge of the supervision and conduct of the farming operations on the entire farm.

(j) "Person" means an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity, and wherever applicable, a State, a political subdivision of a State or any agency thereof.

(k) "Producer" means a person who as owner, landlord, tenant, share cropper, or laborer is entitled to share in the tobacco available for marketing from the farm or in the proceeds thereof.

(l) "Pound" means that amount of tobacco which, if weighed in its unstemmed form and in the condition in which it is usually marketed by producers, would equal one pound standard weight.

(m) "Sale" means the first marketing of farm tobacco on which the gross amount of the sales price therefor has been or could be readily determined.

(n) "Sale date" means the date on which the gross amount of the sales price of the first marketing of farm tobacco has been or could be readily determined.

(o) "Secretary" means the Secretary or Acting Secretary of Agriculture of the United States.

(p) "State administrative officer" means the person employed by the State committee to execute the policies of the State committee and be responsible for the day-to-day operations of the State PMA office, or the person acting in such capacity.

(q) "Tobacco" means (1) type 42 tobacco—that type of cigar-leaf tobacco commonly known as Gebhardt, Ohio Broadleaf, or Ohio Broadleaf, produced principally in the Miami Valley section of Ohio and extending into Indiana; (2) type 43 tobacco—that type of cigar-leaf tobacco commonly known as Zimmer, Spanish, or Zimmer Spanish, produced principally in the Miami Valley section of Ohio and extending into Indiana; (3) type 44 tobacco—that type of cigar-leaf tobacco commonly known as Dutch, Shoestring Dutch, or Little Dutch, produced principally in the Miami Valley section of Ohio; (4) type 51 tobacco—that type of cigar-leaf tobacco commonly known as Connecticut Valley Broadleaf or Connecticut Broadleaf, produced primarily in the Valley area of Connecticut; (5) type 52 tobacco—that type of cigar-leaf tobacco commonly known as Connecticut Valley Havana Seed, or Havana Seed of Connecticut and Massachusetts, produced primarily in the Connecticut Valley area of Massachusetts and Connecticut; (6) type 53 tobacco—that type of cigar-leaf tobacco commonly known as York State Tobacco, or Havana Seed of New York and Pennsylvania, produced principally in the Big Flats section of New York, extending into Pennsylvania and in the Onondaga section of New York State; (7) type 54 tobacco—that type of cigar-leaf tobacco commonly known as southern Wisconsin cigar-leaf

or southern Wisconsin binder type, produced principally south and east of the Wisconsin river; and (8) type 55 tobacco—that type of cigar-leaf tobacco commonly known as Northern Wisconsin cigar-leaf or Northern Wisconsin binder type, produced principally north and west of the Wisconsin river, as classified in Service and Regulatory Announcement No. 118 (7 CFR Part 30) of the Bureau of Agricultural Economics of the United States Department of Agriculture. Tobacco which has the same characteristics and corresponding qualities, colors, and lengths shall be treated as one type, regardless of any factors of historical or geographical nature which cannot be determined by an examination of the tobacco. The term "tobacco" shall include all leaves harvested, including trash.

(r) "Tobacco available for marketing" means all tobacco produced on the farm in the calendar year 1953 plus any carry-over tobacco, less any tobacco disposed of in accordance with § 723.443.

(s) "Tobacco subject to marketing quotas" means any tobacco of types 42-44 and 51-55, inclusive, marketed during the period October 1, 1953, to September 30, 1954, inclusive, and any tobacco of 42-44 and 51-55 types, inclusive, produced in the calendar year 1953 and marketed prior to October 1, 1953.

(t) "Trucker" means a person who engages to any extent in the business of trucking or hauling tobacco for producers to a point where it may be marketed or otherwise disposed of in the form and in the condition in which it is usually marketed by producers.

§ 723.432 *Instructions and forms.* The Director shall cause to be prepared and issued such forms as are necessary, and shall cause to be prepared such instructions as are necessary, for carrying out the regulations in this part. The forms and instructions shall be approved by, and the instructions shall be issued by, the Assistant Administrator for Production, Production and Marketing Administration.

§ 723.433 *Extent of calculations and rule of fractions.* (a) The acreage of tobacco harvested on a farm in 1953 shall be expressed in tenths rounding upward all fractions of six hundredths of an acre or more and dropping all fractions of five hundredths of an acre or less. For example, 4.56 acres would be 4.6 acres and 4.55 acres would be 4.5 acres.

(b) The percentage of excess tobacco available for marketing from a farm, hereinafter referred to as the "percent excess," shall be expressed in tenths and fractions of less than one-tenth shall be dropped. For example, 12.59 percent would be 12.5 percent.

(c) The amount of penalty per pound upon marketings of tobacco subject to penalty, hereinafter referred to as the "converted rate of penalty," shall be expressed in tenths of a cent and fractions of less than a tenth shall be dropped, except that if the resulting converted rate of penalty is less than a tenth of a cent, it shall be expressed in hundredths and fractions of less than a hundredth

shall be dropped. For example, 3.68 cents per pound would be 3.6 cents, and 0.068 cent per pound would be 0.06 cent.

FARM MARKETING QUOTAS AND MARKETING CARDS

§ 723.434 *Amount of farm marketing quota.* (a) The marketing quota for a farm shall be the actual production of tobacco on the farm acreage allotment, as established for the farm in accordance with 1023 (Cigar Leaf-53)-3, Marketing Quota Regulations 1953-54, as amended (17 F. R. 6619, 17 F. R. 6758, 17 F. R. 8893, 18 F. R. 925). The actual production of the farm acreage allotment shall be the average yield per acre of the entire acreage of tobacco harvested on the farm in 1953 times the farm acreage allotment.

(b) The excess tobacco on any farm shall be (1) that quantity of tobacco which is equal to the average yield per acre of the entire acreage of tobacco harvested on the farm in 1953 times the number of acres harvested in excess of the farm acreage allotment, plus (2) any excess carry-over tobacco (for 1953-54 there will be no excess tobacco to carry over into the 1953-54 marketing year). The acreage of tobacco determined for a farm for the purpose of issuing the correct marketing card for the farm, as provided in § 723.436, shall be considered the harvested acreage for the farm unless the farm operator furnishes proof satisfactory to the county committee that a portion of the acreage planted will not be harvested or that a representative portion of the production of the acreage harvested will be disposed of other than by marketing.

§ 723.435 *Transfer of farm marketing quotas.* There shall be no transfer of farm marketing quotas except as provided in §§ 723.420 and 723.426 of the cigar-filler and binder tobacco marketing quota regulations for determining acreage allotments and normal yields, 1953-54 marketing year.

§ 723.436 *Issuance of marketing cards.* A marketing card shall be issued for each farm having tobacco available for marketing. Subject to the approval of the county office manager, two or more marketing cards may be issued for any farm. All entries on each marketing card shall be made in accordance with the instructions for issuing marketing cards. Upon the return to the county PMA office of the marketing card after all memoranda of sale have been issued therefrom and before the marketing of tobacco from the farm has been completed, a new marketing card of the same kind, bearing the same name, information, and identification as the used card shall be issued for the farm. A new marketing card of the same kind shall be issued to replace a card which has been determined by the county office manager to have been lost, destroyed, or stolen.

(a) *Within Quota Marketing Card (MQ-76—Tobacco).* A Within Quota Marketing Card authorizing the marketing without penalty of the tobacco available for marketing shall be issued for a farm under the following conditions:

(1) If the harvested acreage of tobacco in 1953 is not in excess of the farm

acreage allotment and any excess carry-over tobacco from any marketing year can be marketed without penalty under the provisions of § 723.442 (b) (for 1953-54 there will be no excess tobacco to carry over into the 1953-54 marketing year);

(2) If all excess tobacco produced on the farm is disposed of in accordance with § 723.443 (b); or

(3) If the tobacco was grown for experimental purposes on land owned or leased by a publicly-owned agricultural experiment station and is produced at public expense by employees of the experiment station, or if the tobacco was produced by farmers pursuant to an agreement with a publicly-owned experiment station whereby the experiment station bears the costs and risks incident to the production of the tobacco and the proceeds from the crop inure to the benefit of the experiment station: *Provided*, That such agreement is approved by the State committee prior to the issuance of a marketing card for the farm.

(b) *Excess Marketing Card (MQ-77—Tobacco).* An Excess Marketing Card showing the extent to which marketings of tobacco from a farm are subject to penalty shall be issued unless a within quota card is required to be issued for the farm under paragraph (a) of this section, except that if the farm operator fails to disclose, or otherwise furnish, or prevents the representative of the county committee from obtaining, any information necessary to the issuance of the correct marketing card, an excess marketing card shall be issued showing that all tobacco from the farm is subject to the rate of penalty set forth in § 723.445.

§ 723.437 *Person authorized to issue cards.* The county office manager shall be the issuing officer and shall sign marketing cards for farms in the county. The issuing officer may designate not more than three persons to sign his name in issuing marketing cards: *Provided*, That each such person shall place his initials immediately beneath the name of the issuing officer as written by him on the card.

§ 723.438 *Rights of producers in marketing cards.* Each producer having a share in the tobacco available for marketing from a farm shall be entitled to the use of the marketing card for marketing his proportionate share.

§ 723.439 *Successors in interest.* Any person who succeeds in whole or in part to the share of a producer in the tobacco available for marketing from a farm shall, to the extent of such succession, have the same rights as the producer to the use of the marketing card for the farm.

§ 723.440 *Invalid cards.* (a) A marketing card shall be invalid if:

(1) It is not issued or delivered in the form and manner prescribed;

(2) Entries are omitted or incorrect;

(3) It is lost, destroyed, stolen, or becomes illegible; or

(4) Any erasure or alteration has been made and not properly initialed.

(b) In the event any marketing card becomes invalid (other than by loss, de-

struction, or theft, or by omission, alteration or incorrect entry which has been corrected by the county office manager or his representative), the farm operator, or the person having the card in his possession, shall return it to the county PMA office at which it was issued.

(c) If an entry is not made on a marketing card as required, either through omission or incorrect entry, and the proper entry is made and initialed by the county office manager or his representative, then such card shall become valid.

§ 723.441 Report of misuse of marketing card. Any information which causes a member of a State, county, or community committee, or an employee of a State or county PMA office, to believe that any tobacco which actually was produced on one farm has been or is being marketed under the marketing card issued for another farm shall be reported immediately by such person to the county or State PMA office.

MARKETING OR OTHER DISPOSITION OF TOBACCO AND PENALTIES

§ 723.442 Extent to which marketings from a farm are subject to penalty. (a) Marketings of tobacco from a farm having no carry-over tobacco available for marketing shall be subject to penalty by the percent excess determined as follows: Divide the acreage of tobacco harvested in excess of the farm acreage allotment and not disposed of under § 723.443 by the total acreage of tobacco harvested from the farm.

(b) Marketings of tobacco from a farm having carry-over tobacco available for marketing shall be subject to penalty by the percent excess determined as follows:

(1) Determine the number of "carry-over acres" by dividing the number of pounds of carry-over tobacco from the prior years by the normal yield for the farm for that year.

(2) Determine the number of "within quota carry-over acres" by multiplying the "carry-over acres" (subparagraph (1) of this paragraph) by the "percent within quota" (i. e., 100 percent minus the percent excess) for the year in which the carry-over tobacco was produced, except that if the excess portion of the carry-over tobacco has been disposed of under § 723.443, the "percent within quota" shall be 100. (For 1953-54, the "percent within quota" will be 100 since there is no penalty tobacco to carry over.)

(3) Determine the "total acres" of tobacco by adding the "carry-over acres" (subparagraph (1) of this paragraph) and the acreage of tobacco harvested in the current year.

(4) Determine the "excess acres" by subtracting from the "total acres" (subparagraph (3) of this paragraph) the sum of the 1953 allotment and the "within quota carry-over acres" (subparagraph (2) of this paragraph).

(5) Determine the percent excess by dividing the "total acres" into the "excess acres" (subparagraph (4) of this paragraph).

(6) Those persons having an interest in the carry-over tobacco for a farm

shall be liable for the payment of any penalty due thereon.

(c) For the purpose of determining the penalty due on each marketing by a producer of tobacco subject to penalty, the converted rate of penalty per pound shall be determined by multiplying the applicable rate of penalty by the percent excess obtained under paragraph (a) or (b) of this section. The memorandum of sale issued to identify each such marketing shall show the amount of penalty due.

§ 723.443 Disposition of excess tobacco. The farm operator may elect to give satisfactory proof of disposition of excess tobacco prior to the marketing of any tobacco from the farm by either of the following methods:

(a) By storage of the excess tobacco in a place where it will be available for convenient physical inspection separately from any other tobacco by the county committee at any time, the tobacco so stored to be representative of the entire 1953 crop produced on the farm, and posting of a bond approved by the county committee in the penal sum of twice the rate of penalty per pound set forth in § 723.445 times the quantity of excess tobacco stored. Penalty at the applicable full rate of penalty per pound on marketings of excess tobacco shall become due upon the removal from storage of the excess tobacco (removal from storage will include moving such tobacco to a place where it cannot be conveniently physically inspected separately from any other tobacco at any time by the county committee), except that an amount of such tobacco in storage equal to the normal production of the acreage by which the 1954 harvested acreage plus any acreage added with respect to any excess carry-over tobacco for the farm pursuant to § 723.442 (b) is less than the 1954 allotment may be removed from storage and marketed penalty free.

(b) By furnishing to the county committee satisfactory proof that excess tobacco representative of the entire crop will not be marketed.

§ 723.444 Identification of marketings. Each marketing of tobacco from a farm shall be identified by an executed memorandum of sale from the 1953 marketing card (MQ-76—Tobacco or MQ-77—Tobacco) issued for the farm on which the tobacco was produced.

(a) **Memorandum of sale.** (1) If a memorandum of sale is not issued by the buyer to identify a sale of producer's tobacco by the end of the sale date and recorded and reported on MQ-95, Buyer's Record, by the 10th day of the calendar month next following the month during which the sale date occurred, the marketing shall be identified on MQ-95, Buyer's Record, as a marketing of excess tobacco, and reported not later than the 10th day of the calendar month next following the month during which the sale date occurred.

(2) Each excess memorandum of sale issued by a buyer shall be verified by the buyer to determine whether the amount of penalty shown to be due has been correctly computed and such buyer shall

not be relieved of any liability with respect to the amount of penalty due because of any error which may occur in issuing the memorandum of sale.

§ 723.445 Rate of penalty. (a) The penalty per pound upon marketings of excess tobacco subject to marketing quotas shall be fifteen cents.

(b) With respect to tobacco marketed from farms having excess tobacco available for marketing the penalty shall be paid upon that percentage of each lot of tobacco marketed which the tobacco available for marketing in excess of the farm quota is of the total amount of tobacco available for marketing from the farm.

§ 723.446 Persons to pay penalty. The person to pay the penalty due on any marketing of tobacco subject to penalty shall be determined as follows:

(a) **Sale.** The penalty due on tobacco purchased directly from a producer, other than by a buyer outside the United States, shall be paid by the buyer of the tobacco who may deduct an amount equivalent to the penalty from the price paid to the producer.

(b) **Marketings through an agent.** The penalty due on marketings by a producer through an agent who is not a buyer shall be paid by the agent who may deduct an amount equivalent to the penalty from the price paid to the producer.

(c) **Marketings outside the United States.** The penalty due on marketings by a producer directly to any person outside the United States shall be paid by the producer.

§ 723.447 Marketings deemed to be excess tobacco. Any marketing of tobacco under any one of the following conditions shall be deemed to be a marketing of excess tobacco:

(a) **Without memorandum of sale.** Any sale of tobacco by a producer which is not identified by a valid memorandum of sale by the end of the sale date shall be deemed to be a marketing of excess tobacco. The penalty thereon shall be paid by the buyer who may deduct an amount equivalent to the penalty from the amount due the producer.

(b) **Unrecorded sale.** Any sale which is not recorded in MQ-95—Tobacco by the 10th day of the month next following the month during which the sale date occurred, shall be deemed to be a marketing of excess tobacco unless and until the buyer furnishes proof acceptable to the State committee showing that such marketing is not a marketing of excess tobacco. The penalty thereon shall be paid by the buyer.

(c) **Producer marketings.** If any producer falsely identifies or fails to account for the disposition of any tobacco produced on a farm, an amount of tobacco equal to the normal yield of the number of acres harvested in 1953 in excess of the farm acreage allotment shall be deemed to have been a marketing of excess tobacco from such farm. If any producer who manufactures tobacco products from tobacco produced by or for him fails to make the reports, or makes a false report, required under § 723.450 (b), he shall be deemed to

have failed to account for the disposition of tobacco produced on the farm and shall be subject to penalty on such tobacco. The penalty thereon shall be paid by the producer.

§ 723.443 Payment of penalty. (a) Penalties shall become due at the time the tobacco is marketed, except in the case of tobacco removed from storage as provided in § 723.443 (a), and shall be paid by remitting the amount thereof to the State PMA office not later than the 10th day of the calendar month next following the month in which the tobacco became subject to penalty. A draft, money order, or check drawn payable to the Treasurer of the United States may be used to pay any penalty, but any such draft or check shall be received subject to payment at par.

(b) The penalty due on any sale of tobacco by a producer as determined under §§ 723.430 to 723.460 shall be paid as specified in § 723.446 even though the penalty may exceed the proceeds for the tobacco.

§ 723.449 Request for return of penalty. Any producer of tobacco after the marketing of all tobacco available for marketing from the farm and any other person who bore the burden of the payment of any penalty may request the return of the amount of such penalty which is in excess of the amount required under §§ 723.430 to 723.460 to be paid. Such request shall be filed with the county PMA office within two (2) years after the payment of the penalty.

RECORDS AND REPORTS

§ 723.450 Producer's records and reports—(a) Report of marketing card. The operator of each farm on which tobacco is produced in 1953 shall return to the county PMA office each marketing card issued for the farm whenever marketings from the farm are completed and in no event later than May 1, 1954. Failure to return the marketing card within fifteen (15) days after written notice by the county office manager shall constitute failure to account for disposition of tobacco marketed from the farm and in the event that a satisfactory account of such disposition is not furnished otherwise the allotment next established for such farm shall be reduced as provided in the cigar-filler and binder tobacco marketing quota regulations for determining acreage allotments and normal yields, 1954-55 marketing year. The county office manager may reissue the same marketing card or issue a new marketing card for any farm from which the marketing of tobacco has not been completed by May 1, 1954.

(b) **Reports by producer-manufacturers.** (1) Each producer who manufactures tobacco products from tobacco produced by or for him as a producer shall report to the State PMA office as follows with respect to such tobacco.

(i) If the 1953 harvested acreage is not in excess of the 1953 farm tobacco acreage allotment: The producer-manufacturer shall furnish the State PMA office a report, as soon as the tobacco has been weighed, and not later than the date specified in writing by the State

administrative officer, showing the total pounds of tobacco produced, the date(s) on which such tobacco was weighed, the farm serial number of the farm on which it was produced, and the estimated value of such tobacco.

(ii) If the 1953 harvested acreage is in excess of the 1953 farm acreage allotment:

(a) If the excess tobacco (1953 actual yield per acre on the entire crop multiplied by the excess acreage) is stored under bond pursuant to § 723.443 (a), the producer-manufacturer shall furnish the State PMA office a report, as soon as the tobacco has been weighed, and not later than the date specified in writing by the State administrative officer, showing the total pounds of tobacco produced on the farm, the farm serial number of the farm on which it was produced, the date(s) on which it was weighed, the estimated value of the tobacco, the pounds of excess tobacco stored under bond under § 723.443 (a), the estimated value of the excess tobacco, and the location of such excess tobacco. Unless it has become penalty free under circumstances described in § 723.443 (a), penalty shall be paid by the producer-manufacturer on the excess tobacco when it is moved from the place where it can be conveniently inspected by the county committee at any time separate and apart from any other tobacco.

(b) If the excess tobacco is not stored under bond pursuant to § 723.443 (a), the producer-manufacturer shall furnish the State PMA office a report, as soon as the tobacco has been weighed, and not later than the date specified in writing by the State administrative officer, showing the total pounds of tobacco produced on the farm, the date(s) on which the tobacco was weighed, the farm serial number of the farm on which it was produced, the estimated value of the tobacco, and the location of the tobacco. Unless it has become penalty free under circumstances described in § 723.442 (b), or unless he makes the reports outlined in this section, penalty shall be paid on the tobacco by the producer-manufacturer, at the converted rate of penalty shown on the marketing card issued for the farm, when it is moved from the place where it can be conveniently inspected by the county committee at any time separate and apart from any other tobacco.

(2) If the producer-manufacturer does not place the excess tobacco in storage under bond under § 723.443 (a) and does not pay the penalty on the tobacco at the converted rate of penalty shown on the marketing card, as provided in this section, he shall notify the buyer of the manufactured product, or the buyer of any residue resulting from processing the tobacco, in writing, at time of sale of such product or residue of the precise amount of penalty due on such manufactured product or residue. In such event, the producer-manufacturer shall immediately notify the Director and shall account for the disposition of such tobacco by furnishing the Director a report, on a form to be furnished him by the Director, showing the name and address of the buyer of the manufactured

products or residue, a detailed account of the disposition of such tobacco and the exact amounts of penalty due with respect to each such sale of such products or residue, together with copies of the written notice of the exact amounts of the penalty due given to the buyers of such products or residue. Failure to file such report or the filing of a report which is found by the State committee to be incomplete or incorrect shall constitute failure of the producer-manufacturer to account for the disposition of tobacco produced on his farm and in the event of such failure the allotment next established for such farm shall be reduced as provided in the cigar-filler and binder tobacco marketing quota regulations for determining acreage allotments and normal yields, 1954-55 marketing year, and the producer-manufacturer shall be liable for the payment of penalty as provided in § 723.447 (c).

(3) The reports required by this paragraph shall be in addition to the reports required by paragraph (a) of this section with respect to tobacco produced by or for the producer-manufacturer but not used by him in the manufacture of products therefrom.

(c) **Additional reports by producers.** In addition to any other reports which may be required under §§ 723.430 to 723.460, the operator of each farm or any other person having an interest in the tobacco grown on the farm (even though the harvested acreage does not exceed the acreage allotment or even though no allotment was established for the farm) shall upon written request by registered mail from the State administrative officer and within fifteen days after the deposit of such request in the United States mails, addressed to such person at his last known address, furnish the Secretary a written report of the disposition made of all tobacco produced on the farm by sending the same to the State PMA office showing, as to the farm at the time of filing said report, (1) the number of acres of tobacco harvested, (2) the total production of tobacco, (3) the amount of tobacco on hand and its location, and (4) as to each lot of tobacco marketed, the name and address of the buyer or other person to or through whom such tobacco was marketed and the number of pounds marketed, the gross price, and the date of the marketing. Failure to file the report as requested, or the filing of a report which is found by the State committee to be incomplete or incorrect, shall constitute failure of the producer to account for disposition of tobacco produced on the farm and the allotment next established for such farm shall be reduced as provided in the cigar-filler and binder tobacco marketing quota regulations for determining acreage allotments and normal yields, 1954-55 marketing year.

§ 723.451 Buyer's records—(a) Record of marketing. (1) Each buyer shall keep such records as will enable him to furnish the State PMA office with respect to each sale of tobacco made by producers to such buyer the following information:

(i) The name of the operator of the farm on which the tobacco was produced and the name of the seller and the sell-

er's address in the case of a sale by a person other than the farm operator.

- (ii) Date of sale.
- (iii) The serial number of the memorandum of sale used to identify the sale.
- (iv) Number of pounds sold.
- (v) Gross sale price.
- (vi) Amount of any penalty and the amount of any deduction on account of penalty from the price paid the producer(s).

(2) Any buyer or any other person who grades tobacco for farmers shall maintain records which will enable him to furnish the State PMA office the name of the farm operator and the amount of each grade of tobacco obtained from the grading of tobacco from each farm.

(b) *Identification of sale on buyer's records.* The serial number of the memorandum of sale issued to identify each sale by a producer shall be recorded on the check register or check stub for the check written with respect to such sale of tobacco. The serial number of such memorandum shall also be entered on the buyer's copy of the receipt furnished the producer by the buyer, or the buyer's copy of the contract to purchase, or on the document customarily used in recording the purchase, and on MQ-95—Tobacco.

(c) *Marketing card and memorandum of sale.* A valid memorandum of sale to cover each sale of tobacco by a producer shall be properly issued by the buyer. The buyer shall also properly record the sale on the marketing card.

(d) *Records of buyer's disposition of tobacco.* Each buyer shall maintain records which will show the disposition made by him of all tobacco purchased by or for him from producers.

(e) *Additional records and reports by buyers.* Each buyer shall keep such records and furnish such reports to the State PMA office, in addition to the foregoing, as the State committee may find necessary to insure the proper identification of the marketings of tobacco and the collection of penalties due thereon as provided in §§ 723.430 to 723.460.

§ 723.452 *Buyer's reports.*—(a) *Report of buyer's name, address, and registration number.* Each buyer shall properly execute, detach and promptly forward to the State PMA office "Receipt for Buyer's Record" contained in MQ-95—Tobacco which is issued to the buyer.

(b) *Record and report of purchases of tobacco from producers.* (1) Each buyer shall keep a record and make reports on MQ-95—Tobacco, Buyer's Record, showing all purchases of tobacco made by or for him from producers. Such record and report shall show for each sale, the sale date, the name of the farm operator (and the name and address of the person selling the tobacco if other than the farm operator), the serial number of the memorandum of sale issued with respect to the sale, the pounds of tobacco represented in the sale, the gross amount; the rate of penalty shown on the memorandum of sale, and the amount of the penalty. If no marketing card is presented by the producer, the buyer shall record and report the purchase as provided above except that the buyer shall

enter the word "none" in the space for the serial number of the memorandum of sale, the penalty rate of fifteen cents per pound in the space for rate of penalty, and shall show the name and address of the seller in the space for the seller's name.

(2) The original of MQ-95—Tobacco, the memoranda of sale, and a remittance for all penalties shown by the entries on MQ-95—Tobacco and on the memoranda of sale to be due shall be forwarded to the State PMA office not later than the 10th day of the calendar month next following the month during which the sale date occurred.

§ 723.453 *Buyers not exempt from regular records and reports.* No buyer shall be exempt from keeping the records and making the reports required by the regulations in this part. Any organization which receives tobacco from producers for (a) the purpose of selling it for the producer, or (b) the purpose of placing it under a Federal loan, shall keep the records, make the reports, and remit penalties in case of receiving such tobacco for sale, as required in §§ 723.430 to 723.460 for buyers.

§ 723.454 *Records and reports of truckers and persons sorting, stemming, packing, or otherwise processing tobacco.*

- (a) Each person engaged to any extent in the business of trucking tobacco for producers shall keep such records as will enable him to furnish the State PMA office a report with respect to each lot of tobacco received by him showing (1) the name and address of the farm operator, (2) the date of receipt of the tobacco, (3) the number of pounds received, and (4) the name and address of the person to whom it was delivered.

(b) Each person engaged to any extent in the business of sorting, stemming, packing, or otherwise processing tobacco for producers shall keep such records as will enable him to furnish the Director a report showing (1) the information required above for truckers, and in addition, (2) the purpose for which the tobacco was received, (3) the amount of advance made by him on the tobacco, and (4) the disposition of the tobacco.

(c) Each such person shall make such reports to the Director as he may find necessary to enforce §§ 723.430 to 723.460.

§ 723.455 *Separate records and reports from persons engaged in more than one business.* Any person who is required to keep any record or make any report as a buyer or as a person engaged in the business of sorting, stemming, packing, or otherwise processing tobacco for producers, and who is engaged in more than one such business, shall keep such records as will enable him to make separate reports for each such business in which he is engaged to the same extent for each such business as if he were engaged in no other business.

§ 723.456 *Failure to keep records or make reports.* Any buyer, trucker, or person engaged in the business of sorting, stemming, packing, or otherwise processing tobacco for producers, who fails to make any report or keep any record as required under §§ 723.430 to 723.460 or who makes any false report or

record, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than \$500; and any tobacco buyer who fails to remedy such violation by making a complete and accurate report or keeping a complete and accurate record as required under these regulations within fifteen days after notice to him of such violation shall be subject to an additional fine of \$100 for each ten thousand pounds of tobacco, or fraction thereof, bought or sold by him after the date of such violation: *Provided*, That such fine shall not exceed \$5,000; and notice of such violation shall be served upon the tobacco buyer by mailing the same to him by registered mail or by posting the same at an established place of business operated by him, or both. Notice of any violation by a tobacco buyer shall be given by the Director.

§ 723.457 *Examination of records and reports.* For the purpose of ascertaining the correctness of any report made or record kept, or of obtaining information required to be furnished in any report but not so furnished, any buyer, trucker, or person engaged in the business of sorting, stemming, packing, or otherwise processing tobacco for producers shall make available for examination upon written request by the State administrative officer or Director, such books, papers, records, accounts, correspondence, contracts, checks, check registers, check stubs, and documents and memoranda as the State administrative officer or Director has reason to believe are relevant and are within the control of such person.

§ 723.458 *Length of time records and reports to be kept.* Records required to be kept and copies of the reports required to be made by any person under §§ 723.430 to 723.460 for the 1953-54 marketing year shall be kept by him until September 30, 1956. Records shall be kept for such longer period of time as may be requested in writing by the Director.

§ 723.459 *Information confidential.* All data reported to or acquired by the Secretary pursuant to the provisions of §§ 723.430 to 723.460 shall be kept confidential by all officers and employees of the United States Department of Agriculture and by all members of county and community committees and all county PMA office employees and only such data so reported or acquired as the Assistant Administrator for Production, Production and Marketing Administration, deems relevant shall be disclosed by them and then only in a suit or administrative hearing under Title III of the act.

§ 723.460 *Redelegation of authority.* Any authority delegated to the State committee by §§ 723.430 to 723.460 may be redelegated by the State committee.

NOTE: The record keeping and reporting requirements of these regulations have been approved by and subsequent reporting requirements will be subject to the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Done at Washington, D. C., this 8th day of June 1953. Witness my hand and

the seal of the Department of Agriculture.

[SEAL] TRUE D. MORSE,
Acting Secretary of Agriculture.

[F. R. Doc. 53-5175; Filed, June 10, 1953;
8:52 a. m.]

[1026 (Fire, Air, and Sun-53)-1]

PART 726—FIRE-CURED, DARK AIR-CURED,
AND VIRGINIA SUN-CURED TOBACCO

MARKETING QUOTA REGULATIONS, 1953-54
MARKETING YEAR

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AUTHORITY: §§ 726.430 to 726.460 issued under sec. 375, 52 Stat. 66; 7 U. S. C. 1375. Interpret or apply 52 Stat. 38, 47, 48, 65, 66, as amended; 7 U. S. C. 1301, 1313, 1314, 1372, 1374, 1375.

GENERAL

§ 726.430 *Basis and purpose.* Sections 726.430 to 726.460 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended and govern the issuance of marketing cards, the identification of tobacco, the collection and refund of penalties, and the records and reports incident thereto on the marketing of fire-cured, dark air-cured, and Virginia sun-cured tobacco during the 1953-54 marketing year. Prior to pre-

paring §§ 726.430 to 726.460, public notice (18 F. R. 2475) of their formulation was given in accordance with the Administrative Procedure Act (5 U. S. C. 1008). The data, views, and recommendations pertaining to §§ 726.430 to 726.460 which were submitted to have been duly considered within the limits permitted by the Agricultural Adjustment Act of 1938, as amended.

§ 726.431 *Definitions.* As used in §§ 726.430 to 726.460, and in all instructions, forms, and documents in connection therewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the context or subject matter otherwise requires.

(a) "Act" means the Agricultural Adjustment Act of 1938, as amended.

(b) "Carry-over" tobacco means, with respect to a farm, tobacco produced prior to the beginning of the calendar year 1953, which has not been marketed or which has not been disposed of under § 726.443.

(c) Committee: (1) "Community committee" means the persons elected within a community as the community committee pursuant to regulations governing the selection and functions of Production and Marketing Administration county and community committees.

(2) "County committee" means the persons elected within a county as the county committee pursuant to regulations governing the selection and functions of Production and Marketing Administration county and community committees.

(3) "State committee" means the persons in a State designated by the Secretary as the State committee of the Production and Marketing Administration.

(d) "County office manager" means the person employed by the county committee to execute the policies of the county committee and be responsible for the day-to-day operations of the county PMA office, or the person acting in such capacity.

(e) "Dealer" or "buyer" means a person who engages to any extent in the business of acquiring tobacco from producers without regard to whether such person is registered as a dealer with the Bureau of Internal Revenue.

(f) "Director" means Director or Acting Director, Tobacco Branch, Production and Marketing Administration, United States Department of Agriculture.

(g) "Farm" means all adjacent or nearby farm land under the same ownership which is operated by one person, including also:

(1) Any other adjacent or nearby farm land which the county committee, in accordance with instructions issued by the Assistant Administrator for Production, Production and Marketing Administration, determines is operated by the same person as part of the same unit with respect to the rotation of crops and with work stock, farm machinery, and labor substantially separate from that for any other lands; and

(2) (i) Any field-rented tract (whether operated by the same or another person)

which, together with any other land included in the farm, constitutes a unit with respect to the rotation of crops.

(ii) A farm shall be regarded as located in the county in which the principal dwelling is situated, or if there is no dwelling thereon it shall be regarded as located in the county in which the major portion of the farm is located.

(h) "Field assistant" means any duly authorized employee of the United States Department of Agriculture, and any duly authorized employee of a county PMA office whose duties involve the preparation and handling of records and reports pertaining to tobacco marketing quotas.

(i) "Floor sweepings" means scraps, leaves, or bundles of tobacco, generally of inferior quality, which accumulate on the warehouse floor and which not being subject to identification with any particular lot of tobacco are gathered up by the warehouseman for sale. Floor sweepings shall not include tobacco defined as "pick-ups."

(j) "Leaf account tobacco" means all tobacco purchased by or for a warehouseman and "leaf account" shall include the records required to be kept and copies of the reports required to be made under §§ 726.430 to 726.460 relating to tobacco purchased by or for a warehouseman and resales of such tobacco.

(k) "Market" means the disposition in raw or processed form of tobacco by voluntary or involuntary sale, barter, or exchange, or by gift inter vivos. "Marketing" and "marketed" shall have corresponding meanings to the term "market."

(l) "Nonwarehouse sale" means any first marketing of farm tobacco other than by sale at public auction through a warehouse in the regular course of business.

(m) "Operator" means the person who is in charge of the supervision and conduct of the farming operations on the entire farm.

(n) "Person" means an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity, and wherever applicable, a State, a political subdivision of a State or any agency thereof.

(o) Pick-ups: (1) "Pick-ups (a)" means any tobacco sorted and reclaimed from leaves or bundles which have fallen to the warehouse floor in the usual course of business.

(2) "Pick-ups (b)" means any tobacco previously purchased at auction but not delivered to the buyer because of rejection by the buyer, lost ticket, or any other reason, and which is not turned back to a dealer other than the warehouseman, and shall include tobacco delivered to the buyer but returned by the buyer to the warehouseman and not turned back by the warehouseman to a dealer.

(p) "Producer" means a person who, as owner, landlord, tenant, share cropper, or laborer is entitled to share in the tobacco available for marketing from the farm or in the proceeds thereof.

(q) "Pound" means that amount of tobacco which, if weighed in its unstemmed form and in the condition in which it is usually marketed by producers, would equal one pound standard weight.

(r) "Resale" means the disposition by sale, barter, exchange, or gift *inter vivos*, of tobacco which has been marketed previously.

(s) "Sale day" means the period at the end of which the warehouseman bills to buyers the tobacco so purchased during such period.

(t) "Secretary" means the Secretary or Acting Secretary of Agriculture of the United States.

(u) "State administrative officer" means the person employed by the State committee to execute the policies of the State committee and be responsible for the day-to-day operations of the State PMA office, or the person acting in such capacity.

(v) "Suspended sale" means any first marketing of farm tobacco at a warehouse sale for which a memorandum of sale is not issued by the end of the sale day on which such marketing occurred.

(w) "Tobacco" means each one of the kinds of tobacco listed in this paragraph comprising the types specified, as classified in Service and Regulatory Announcements No. 118 (§§ 30.4 and 30.5 of this title) of the Bureau of Agricultural Economics of the United States Department of Agriculture:

Fire-cured tobacco, comprising types 21, 22, 23, and 24;

Dark air-cured tobacco, comprising types 35 and 36;

Virginia sun-cured tobacco, comprising type 37.

Any tobacco that has the same characteristics and corresponding qualities, colors, and lengths as either fire-cured, dark air-cured or Virginia sun-cured tobacco shall be considered respectively, either fire-cured, dark air-cured, or Virginia sun-cured tobacco regardless of any factors of historical or geographical nature which cannot be determined by examination of the tobacco.

(x) "Tobacco available for marketing" means all tobacco produced on the farm in the calendar year 1953 plus any carry-over tobacco, less any tobacco disposed of in accordance with § 726.443.

(y) "Tobacco subject to marketing quotas" means any fire-cured, dark air-cured, or Virginia sun-cured tobacco marketed during the period October 1, 1953, to September 30, 1954, inclusive, and any fire-cured, dark air-cured, or Virginia sun-cured tobacco produced in the calendar year 1953 and marketed prior to October 1, 1953.

(z) "Trucker" means a person who engages to any extent in the business of trucking or hauling tobacco for producers to a point where it may be marketed or otherwise disposed of in the form and in the condition in which it is usually marketed by producers.

(aa) "Warehouseman" means a person who engages to any extent in the business of holding sales of tobacco at public auction at a warehouse.

(bb) "Warehouse sale" means a marketing of tobacco by a sale at public auction through a warehouse in the regular course of business, and shall include all lots or baskets of tobacco marketed in sequence at a given time.

§ 726.432 *Instructions and forms.* The Director shall cause to be prepared and

issued such forms as are necessary and shall cause to be prepared such instructions as are necessary for carrying out the regulations in this part. The forms and instructions shall be approved by, and the instructions shall be issued by, the Assistant Administrator for Production, Production and Marketing Administration.

§ 726.433 *Extent of calculations and rule of fractions.* (a) The acreage of tobacco harvested on a farm in 1953 shall be expressed in tenths rounding upward all fractions of six hundredths of an acre or more and dropping all fractions of five hundredths of an acre or less. For example 1.16 acres would be 1.2 acres and 1.15 acres would be 1.1 acres.

(b) The percentage of excess tobacco available for marketing from a farm, hereinafter referred to as the "percent excess," shall be expressed in tenths and fractions of less than one-tenth shall be dropped. For example, 12.59 percent would be 12.5 percent.

(c) The amount of penalty per pound upon marketings of tobacco subject to penalty, hereinafter referred to as the "converted rate of penalty," shall be expressed in tenths of a cent and fractions of less than a tenth shall be dropped, except that if the resulting converted rate of penalty is less than a tenth of a cent, it shall be expressed in hundredths and fractions of less than a hundredth shall be dropped. For example, 3.68 cents per pound would be 3.6 cents and 0.068 cent per pound would be 0.06 cent.

FARM MARKETING QUOTAS AND MARKETING CARDS

§ 726.434 *Amount of farm marketing quota.* (a) The marketing quota for a farm shall be the actual production of tobacco on the farm acreage allotment as established for the farm in accordance with §§ 726.411 to 726.429, 1923 (Fire, Air, and Sun-53)-3, Fire-cured, Dark Air-cured, and Virginia Sun-cured Tobacco Marketing Quota Regulations, 1953-54 Marketing Year, as amended (17 F. R. 6184, 17 F. R. 6428, 17 F. R. 10758, 17 F. R. 10590). The actual production of the farm acreage allotment shall be the average yield per acre of the entire acreage of tobacco harvested on the farm in 1953 times the farm acreage allotment.

(b) The excess tobacco on any farm shall be (1) that quantity of tobacco which is equal to the average yield per acre of the entire acreage of tobacco harvested on the farm in 1953 times the number of acres harvested in excess of the farm acreage allotment, plus (2) any excess carry-over tobacco. The acreage of tobacco determined for a farm for the purpose of issuing the correct marketing card for the farm as provided in § 726.436 shall be considered the harvested acreage for the farm unless the farm operator furnishes proof satisfactory to the county committee that a portion of the acreage planted will not be harvested or that a representative portion of the production of the acreage harvested will be disposed of other than by marketing.

§ 726.435 *Transfer of farm marketing quota.* There shall be no transfer of farm marketing quotas except as provided in §§ 726.420, 726.426 and 726.429 of the fire-cured, dark air-cured, and Virginia sun-cured tobacco marketing quota regulations for determining acreage allotments and normal yields, 1953-54 marketing year.

§ 726.436 *Issuance of marketing cards.* A marketing card shall be issued for each farm having tobacco available for marketing. Subject to the approval of the county office manager, two or more marketing cards may be issued for any farm. All entries on each marketing card shall be made in accordance with the instructions for issuing marketing cards. Upon the return to the county PMA office of the marketing card after all the memoranda of sale have been issued therefrom and before the marketing of tobacco from the farm has been completed, a new marketing card of the same kind, bearing the same name, information and identification as the used card shall be issued for the farm. A new marketing card of the same kind shall be issued to replace a card which has been determined by the county office manager to have been lost, destroyed, or stolen.

(a) *Within Quota Marketing Card (MQ-76—Tobacco).* A Within Quota Marketing Card authorizing the marketing without penalty of the tobacco available for marketing shall be issued for a farm under the following conditions:

(1) If the harvested acreage of tobacco in 1953 is not in excess of the farm acreage allotment and any excess carry-over tobacco from any prior marketing year can be marketed without penalty under the provisions of § 726.442 (b).

(2) If all excess tobacco produced on the farm is disposed of in accordance with § 726.443 (b); or

(3) If the tobacco was grown for experimental purposes on land owned or leased by a publicly owned agricultural experiment station and is produced at public expense by employees of the experiment station, or if the tobacco was produced by farmers pursuant to an agreement with a publicly owned experiment station whereby the experiment station bears the costs and risks incident to the production of the tobacco and the proceeds from the crop inure to the benefit of the experiment station: *Provided*, That such agreement is approved by the State committee prior to the issuance of a marketing card for the farm.

(b) *Excess Marketing Card (MQ-77—Tobacco).* An Excess Marketing Card showing the extent to which marketings of tobacco from a farm are subject to penalty shall be issued unless a within quota card is required to be issued for the farm under paragraph (a) of this section, except that (1) if the farm operator fails to disclose or otherwise furnish, or prevents the representative of the county committee from obtaining any information necessary to the issuance of the correct marketing card, an excess marketing card shall be issued showing that all tobacco from the farm is subject to the rate of penalty set forth

in § 726.445, or (2) if for any farm there is penalty due for 1952 or any prior year because of a failure to satisfactorily account for the disposition of any tobacco or because of the false or improper identification of tobacco, a "zero percent" excess marketing card shall be issued for such farm, except that, if the county committee with the approval of the State committee determines that one or more producers on the farm did not cause, aid or acquiesce in the violation for which the penalty became due, such producer(s) shall be entitled to a within quota marketing card for marketing their proportionate share(s) of the tobacco available for marketing.

§ 726.437 *Person authorized to issue marketing cards.* The county office manager shall be the issuing officer and shall sign marketing cards for farms in the county. The issuing officer may designate not more than three persons to sign his name in issuing marketing cards: *Provided*, That each such person shall place his initials immediately beneath the name of the issuing officer as written by him on the card.

§ 726.438 *Rights of producers in marketing cards.* Each producer having a share in the tobacco available for marketing from a farm shall be entitled to the use of the marketing card issued for the farm for marketing his proportionate share.

§ 726.439 *Successors in interest.* Any person who succeeds in whole or in part to the share of a producer in the tobacco available for marketing from a farm shall, to the extent of such succession, have the same rights as the producer to the use of the marketing card for the farm.

§ 726.440 *Invalid cards.* (a) A marketing card shall be invalid if:

- (1) It is not issued or delivered in the form and manner prescribed;
- (2) Entries are omitted or incorrect;
- (3) It is lost, destroyed, stolen, or becomes illegible; or

(4) Any erasure or alteration has been made and not properly initialed.

(b) In the event any marketing card becomes invalid (other than by loss, destruction, or theft, or by omission, alteration, or incorrect entry which cannot be corrected by a field assistant), the farm operator, or the person having the card in his possession, shall return it to the county PMA office at which it was issued.

(c) If an entry is not made on a marketing card as required, either through omission or incorrect entry, and the proper entry is made and initialed by a field assistant, then such card shall become valid.

§ 726.441 *Report of misuse of marketing card.* Any information which causes a field assistant, a member of a State, county, or community committee, or an employee of a State or county PMA office, to believe that any tobacco which actually was produced on one farm has been or is being marketed under the marketing card issued for another farm shall be reported immediately by such person to the county or State PMA office.

MARKETING OR OTHER DISPOSITION OF TOBACCO AND PENALTIES

§ 726.442 *Extent to which marketings from a farm are subject to penalty.* (a) Marketings of tobacco from a farm having no carry-over tobacco available for marketing shall be subject to penalty by the percent excess determined as follows: Divide the acreage of tobacco harvested in excess of the farm acreage allotment and not disposed of under § 726.443 by the total acreage of tobacco harvested from the farm.

(b) Marketings of tobacco from a farm having carry-over tobacco available for marketing shall be subject to penalty by the percent excess determined as follows:

(1) Determine the number of "carry-over" acres by dividing the number of pounds of "carry-over" tobacco from the prior years by the normal yield for the farm for that year.

(2) Determine the number of "within quota carry-over acres" by multiplying the "carry-over acres" (subparagraph (1) of this paragraph) by the "percent within quota" (i. e., 100 percent minus the "percent excess") for the year in which the "carry-over" tobacco was produced, except that if the excess portion of the carry-over tobacco is disposed of under § 726.443 the "percent within quota" shall be 100.

(3) Determine the "total acres" of tobacco by adding the "carry-over" acres (subparagraph (1) of this paragraph) and the acreage of tobacco harvested in the current year.

(4) Determine the "excess acres" by subtracting from the "total acres" (subparagraph (3) of this paragraph) the sum of the 1953 allotment and the "within quota carry-over acres" (subparagraph (2) of this paragraph).

(5) Determine the percent excess by dividing the total acres into the "excess acres" (subparagraph (4) of this paragraph).

(6) Those persons having an interest in the carry-over tobacco for a farm shall be liable for the payment of any penalty due thereon.

(c) For the purpose of determining the penalty due on each marketing by a producer of tobacco subject to penalty, the converted rate of penalty per pound shall be determined by multiplying the applicable rate of penalty by the percent excess obtained under paragraph (a) or (b) of this section. The memorandum of sale issued to identify each such marketing shall show the amount of penalty due.

§ 726.443 *Disposition of excess tobacco.* The farm operator may elect to give satisfactory proof of disposition of excess tobacco prior to the marketing of any tobacco from the farm by either of the following methods:

(a) (1) By storage of the excess tobacco, the tobacco so stored to be representative of the entire 1953 crop produced on the farm, and posting of a bond approved by the county committee in the penal sum of twice the rate of penalty per pound set forth in § 726.445 times the quantity of excess tobacco stored. Penalty at the applicable full rate per pound on marketings of excess tobacco

shall become due upon the removal from storage of the excess tobacco, except that an amount of such tobacco in storage equal to the normal production of the acreage by which the 1954 harvested acreage plus any acreage added with respect to any excess carry-over tobacco for the farm pursuant to § 726.442 (b) is less than the 1954 allotment may be removed from storage and marketed penalty free.

(2) If the 1953 harvested acreage is less than the 1953 allotment an amount of any tobacco from the farm which was placed under storage for a prior marketing year equal to the normal production of the acreage by which the 1953 harvested acreage plus any acreage added with respect to any excess carry-over tobacco for the farm pursuant to § 726.442 (b) is less than the 1953 allotment may be marketed penalty free.

(b) By furnishing to the county committee satisfactory proof that excess tobacco representative of the entire crop will not be marketed.

§ 726.444 *Identification of marketings.* Each marketing of tobacco from a farm shall be identified by an executed memorandum of sale from the 1953 marketing card (MQ-76—Tobacco or MQ-77—Tobacco) issued for the farm on which the tobacco was produced. In addition, in the case of nonwarehouse sales, each marketing shall also be identified by an executed bill of nonwarehouse sale (reverse side of memorandum of sale).

(a) *Separate display on warehouse floor.* Any warehouseman upon whose floor more than one kind of tobacco is offered for sale at public auction shall display each such kind of tobacco separately and shall make and keep records that will insure a separate accounting of each of such kinds of tobacco sold at auction over the warehouse floor.

(b) *Memorandum of sale.* (1) If a memorandum of sale is not executed to identify a warehouse sale of producer's tobacco by the end of the sale day on which the tobacco was marketed, the marketing shall be a suspended sale, and, unless a memorandum identifying the tobacco so marketed is executed on or before the last warehouse sale day of the marketing season or within four weeks after the date of marketing, whichever comes first, the marketing shall be identified by MQ-82—Tobacco, Sale Without Marketing Card, as a marketing of excess tobacco. The memorandum of sale or MQ-82—Tobacco shall be executed only by a field assistant or other representative of the State administrative officer with the following exceptions:

(i) A warehouseman, or his representative, who has been authorized on MQ-78—Tobacco, may issue a memorandum of sale to identify a warehouse sale if a field assistant is not available at the warehouse when the marketing card is presented. Each memorandum of sale issued by a warehouseman to cover a warehouse sale shall be presented promptly by him to the field assistant for verification with the warehouse records.

(ii) A dealer, or his authorized representative, operating a regular receiving point for tobacco who keeps records

showing the information specified in § 726.452 and who has been authorized on MQ-78—Tobacco, may issue memoranda of sale covering tobacco delivered directly to such receiving point and marketed to such dealer.

(2) The authorization on MQ-78—Tobacco to issue memoranda of sale may be withdrawn by the State administrative officer from any warehouseman or dealer if such action is determined to be necessary in order to properly enforce the provisions of §§ 726.430 to 726.460. The authorization shall terminate upon receipt of written notice setting forth the reason therefor.

(3) Each excess memorandum of sale issued by a field assistant shall be verified by the warehouseman or dealer (or his representative) to determine whether the amount of penalty shown to be due has been correctly computed and such warehouseman or dealer shall not be relieved of any liability with respect to the amount of penalty due because of any error which may occur in executing the memorandum of sale.

(c) *Bill of nonwarehouse sale.* (1) Each nonwarehouse sale shall be identified by a bill of nonwarehouse sale completely executed by the buyer and the farm operator.

(2) Each bill of nonwarehouse sale covering any marketing shall be presented to a field assistant for the issuance of a memorandum of sale and for recording in MQ-79—Tobacco.

§ 726.445 *Rate of penalty.* (a) The penalty per pound upon marketings of excess tobacco subject to marketing quotas shall be fifteen cents per pound in the case of fire-cured tobacco (types 21, 22, 23, and 24), thirteen cents per pound in the case of dark air-cured tobacco (types 35 and 36), and thirteen cents per pound in the case of Virginia sun-cured tobacco (type 37).

(b) With respect to tobacco marketed from farms having excess tobacco available for marketing, the penalty shall be paid upon that percentage of each lot of tobacco marketed which the tobacco available for marketing in excess of the farm quota is of the total amount of tobacco available for marketing from the farm.

§ 726.446 *Persons to pay penalty.* The person to pay the penalty due on any marketing of tobacco subject to penalty shall be determined as follows:

(a) *Warehouse sale.* The penalty due on marketings by a producer through a warehouse shall be paid by the warehouseman who may deduct an amount equivalent to the penalty from the price paid to the producer.

(b) *Nonwarehouse sale.* The penalty due on tobacco purchased directly from a producer other than at public auction through a warehouse shall be paid by the purchaser of the tobacco who may deduct an amount equivalent to the penalty from the price paid to the producer.

(c) *Marketings through an agent.* The penalty due on marketings by a producer through an agent who is not a warehouseman shall be paid by the agent who may deduct an amount equivalent

to the penalty from the price paid to the producer.

(d) *Marketings outside United States.* The penalty due on marketings by a producer directly to any person outside the United States shall be paid by the producer.

§ 726.447 *Marketings deemed to be excess tobacco.* Any marketing of tobacco under any one of the following conditions shall be deemed to be a marketing of excess tobacco:

(a) *Warehouse sale.* Any warehouse sale of tobacco by a producer which is not identified by a valid memorandum of sale on or before the last warehouse sale day of the marketing season or within four weeks following the date of marketing, whichever comes first, shall be identified by a MQ-82—Tobacco and shall be deemed to be a marketing of excess tobacco. The penalty thereon shall be paid by the warehouseman.

(b) *Nonwarehouse sale.* Any nonwarehouse sale which (1) is not identified by a valid bill of nonwarehouse sale (reverse side of memorandum of sale) and (2) is not also identified by a valid memorandum of sale and recorded in MQ-79—Tobacco within one week following the date of purchase, or if purchased prior to the opening of the local auction markets is not identified by a valid memorandum of sale and recorded in MQ-79—Tobacco within one week following the first sale day of the local auction markets, shall be deemed to be a marketing of excess tobacco. The penalty thereon shall be paid by the purchaser of such tobacco.

(c) *Leaf account tobacco.* The part or all of any marketing by a warehouseman which such warehouseman represents to be a leaf account resale, but which when added to prior leaf account resales, as reported under §§ 726.430 to 726.460, is in excess of prior leaf account purchases shall be deemed to be a marketing of excess tobacco unless and until such warehouseman furnishes proof acceptable to the State committee showing that such marketing is not a marketing of excess tobacco. The penalty thereon shall be paid by the warehouseman.

(d) *Dealer's tobacco.* The part or all of any marketing of tobacco by a dealer which such dealer represents to be a resale but which when added to prior resales by such dealer is in excess of the total of his prior purchases as reported on MQ-79—Tobacco shall be deemed to be a marketing of excess tobacco unless and until such dealer furnishes proof acceptable to the State committee showing that such marketing is not a marketing of excess tobacco. The penalty thereon shall be paid by the dealer.

(e) *Marketings not reported.* Any resale of tobacco which under §§ 726.430 to 726.460 is required to be reported by a warehouseman or dealer but which is not so reported within the time and in the manner required by §§ 726.430 to 726.460 shall be deemed to be a marketing of excess tobacco unless and until such warehouseman or dealer furnishes a report of such resale which is acceptable to the State committee. The penalty thereon shall be paid by the warehouse-

man or dealer who fails to make the report as required.

(f) *Producer marketings.* If any producer falsely identifies or fails to account for the disposition of any tobacco produced on a farm, an amount of tobacco equal to the normal yield of the number of acres harvested in 1953 in excess of the farm acreage allotment shall be deemed to have been a marketing of excess tobacco from such farm. The penalty thereon shall be paid by the producer.

§ 726.448 *Payment of penalty.* (a) Penalties shall become due at the time the tobacco is marketed, except in the case of tobacco removed from storage as provided in § 726.443 (a), and shall be paid by remitting the amount thereof to the State PMA office not later than the end of the calendar week following the week in which the tobacco became subject to penalty. A draft, money order, or check drawn payable to the Treasurer of the United States may be used to pay any penalty, but any such draft or check shall be received subject to payment at par.

(b) If the penalty due on any warehouse sale of tobacco by a producer, as determined under §§ 726.430 to 726.460, is in excess of the net proceeds of such sale (gross amount for all lots included in the sale less usual warehouse charges), the amount of the net proceeds accompanied by a copy of the warehouse bill covering such sale may be remitted as the full penalty due. Usual warehouse charges shall not include (1) advances to producers, (2) charges for hauling, or (3) any other charges not usually incurred by producers in marketing tobacco through an auction warehouse.

(c) Nonwarehouse sales shall be subject to the converted rate of penalty for the farm on which the tobacco was produced without regard to the net proceeds of the sale.

§ 726.449 *Request for return of penalty.* Any producer of tobacco after the marketing of all tobacco available for marketing from the farm, and any other person who bore the burden of the payment of any penalty, may request the return of the amount of such penalty which is in excess of the amount required under §§ 726.430 to 726.460 to be paid. Such request shall be filed with the county PMA office within two (2) years after the payment of the penalty.

RECORDS AND REPORTS

§ 726.450 *Producer's records and reports—(a) Report on marketing card.* The operator of each farm on which tobacco is produced in 1953 shall return to the county PMA office each marketing card issued for the farm whenever marketings from the farm are completed and in no event later than thirty days after the close of the tobacco auction markets for the locality in which the farm is located. Failure to return the marketing card within fifteen (15) days after written notice by the county office manager shall constitute failure to account for disposition of tobacco marketed from the farm and in the event that a satisfactory account of such dis-

position is not furnished otherwise, the allotment next established for such farm shall be reduced as provided in the fire-cured, dark air-cured and Virginia sun-cured tobacco marketing quota regulation for determining acreage allotments and normal yields, 1954-55 marketing year.

(b) *Additional reports by producers.* In addition to any other reports which may be required under §§ 726.430 to 726.460, the operator of each farm or any other person having an interest in the tobacco grown on the farm (even though the harvested acreage does not exceed the acreage allotment or even though no allotment was established for the farm) shall upon written request by registered mail from the State administrative officer within fifteen (15) days after the deposit of such request in the United States mails, addressed to such person at his last known address, furnish the Secretary a written report of the disposition made of all tobacco produced on the farm by sending the same to the State PMA office showing, as to the farm at the time of filing said report, (1) the number of acres of tobacco harvested, (2) the total production of tobacco, (3) the amount of tobacco on hand and its location, and (4) as to each lot of tobacco marketed, the name and address of the warehouseman, dealer, or other person to or through whom such tobacco was marketed, and the number of pounds marketed, the gross price, and the date of the marketing. Failure to file the report as requested or the filing of a report which is found by the State committee to be incomplete or incorrect shall constitute failure of the producer to account for disposition of tobacco produced on the farm and the allotment next established for such farm shall be reduced as provided in the fire-cured, dark air-cured, and Virginia sun-cured tobacco marketing quota regulations for determining acreage allotments and normal yields, 1954-55 marketing year.

§ 726.451 *Warehousemen's records and reports—(a) Record of marketing.*

(1) Each warehouseman shall keep such records as will enable him to furnish the State PMA office with respect to each warehouse sale of tobacco made at his warehouse the following information:

(i) The name of the operator of the farm on which the tobacco was produced and the name of the seller in the case of a sale by a producer, and in the case of a resale the name of the seller;

(ii) Date of sale;

(iii) Number of pounds sold;

(iv) Gross sale price;

(v) Amount of any penalty and the amount of any deduction on account of penalty from the price paid the producers(s);

and in addition with respect to each individual basket or lot of tobacco constituting the warehouse sale the following information:

(vi) Name of purchaser;

(vii) Number of pounds sold;

(viii) Cross sale price.

(2) Records of all purchases and resales of tobacco by the warehouseman

shall be maintained to show a separate account for:

(i) Nonwarehouse sales by farmers of tobacco purchased by or on behalf of the warehouseman.

(ii) Purchases and resales for the warehouse leaf account.

(iii) Resales of floor sweepings.

(iv) Resales of pick-ups, with respect to both subparagraphs (1) and (2) as defined in § 726.431 (c).

(3) Any warehouseman or any other person who grades tobacco for farmers shall maintain records which will enable him to furnish the State PMA office the name of the farm operator and the approximate amount of tobacco obtained from the grading of tobacco from each farm.

(4) In the case of resales for dealers, the name of the dealer making each resale shall be shown on the warehouse records so that the individual lots of tobacco sold by the dealer can be identified.

(b) *Identification of sale on check register.* The serial number of the memorandum of sale issued to identify each warehouse sale by a producer or the number of the warehouse bill(s) covering each such sale shall be recorded on the check register or check stub for the check written with respect to such sale of tobacco.

(c) *Memorandum of sale and bill of nonwarehouse sale.* A record in the form of a valid memorandum of sale or a sale without marketing card shall be obtained by a warehouseman to cover each marketing of tobacco from a farm through the warehouse and each nonwarehouse sale of tobacco purchased by or for the warehouseman. For a nonwarehouse sale of tobacco purchased by or for a warehouseman, no memorandum of sale shall be issued unless the bill of nonwarehouse sale on the reverse side of the memorandum is executed. Any warehouseman who obtains possession of any tobacco in the course of grading tobacco from any farm shall obtain a memorandum of sale to cover the amount of such tobacco.

(d) *Suspended sale record.* Any warehouse bills covering farm tobacco for which memoranda of sale have not been issued at the end of the sale day shall be presented to a field assistant who shall stamp such bills "Suspended," write thereon the serial number of the suspended sale, and record the bills on MQ-83—Tobacco, Field Assistant's Report: *Provided*, That if a field assistant is not available, the warehouseman may stamp such bills "Suspended" and deliver them to a field assistant when one is available.

(e) *Warehouse entries on dealer's record.* Each warehouseman shall record on MQ-79—Tobacco the total purchases and resales made by each dealer or other warehouseman during each sale day at the warehouse and enter his initials in the space provided. If any tobacco resold by the dealer is tobacco bought by him from a crop produced prior to 1953 the entry on MQ-79—Tobacco shall clearly show such fact.

(f) *Record and report of purchases and resales.* Each warehouseman shall

keep a record and make reports on MQ-79—Tobacco, Dealer's Record, showing:

(1) All purchases of tobacco directly from producers other than at public auction through a warehouse (nonwarehouse sales).

(2) All purchases and resales of tobacco at public auction through warehouses other than his own.

(3) All purchases of tobacco from dealers other than warehousemen and resales of tobacco to dealers other than warehousemen.

(g) *Season report of warehouse business.* Each warehouseman shall furnish the State PMA office not later than 30 days following the last sale day of the marketing season a report on MQ-80—Tobacco, Auction Warehouse Report, showing (1) for each dealer or buyer, as originally billed, the total pounds and gross amount of tobacco purchased and resold on the warehouse floor; (2) the total pounds and gross amount of "loan tobacco" billed to any association; (3) the total pounds and gross amount of all leaf account tobacco purchased and resold and of all pick-ups (§ 726.431 (c) (1) or (2)), or floor sweepings sold by the warehouseman at public auction over his own warehouse floor; (4) the pounds and estimated value of all tobacco on hand at the time of filing the report and whether such tobacco represents leaf account tobacco, pick-ups (§ 726.431 (c) (1) or (2)), or floor sweepings; (5) the total pounds and gross amount of all tobacco purchased directly from farmers other than at public auction through a warehouse; and (6) the total pounds and gross amount of all purchases over other warehouse floors or from dealers other than warehousemen and all resales over other warehouse floors or to dealers other than warehousemen.

(h) *Report of penalties.* Each warehouseman shall make reports on MQ-81—Tobacco, Report of Penalties, showing for each sale of tobacco subject to penalty (1) the name of the farm operator; (2) the memorandum number; (3) the name of the county in which the farm is located; (4) the farm serial number; (5) the number of pounds sold; (6) the applicable converted rate of penalty; and (7) the amount of penalty due on each such sale. MQ-81—Tobacco shall be prepared for each week and forwarded together with remittance of the penalty due as shown thereon to the State PMA office not later than the end of the calendar week following the week in which the tobacco became subject to penalty.

(i) *Report of resales.* Each warehouseman shall make reports on MQ-86—Tobacco, Report of Resales, showing for each resale of tobacco at auction on the warehouse floor (1) the warehouse bill number; (2) the name on the warehouse bill; (3) the name of the seller, or in the case of a resale for the warehouse whether such resale represents leaf account tobacco, pick-ups, or floor sweepings; (4) the registration number and State of the person making the resale; (5) the number of pounds sold; and (6) the gross amount for the sale. MQ-86—Tobacco shall be prepared for each sale day and forwarded

to the State PMA office not later than the end of the calendar week following the week in which the tobacco was resold.

(j) *Additional records and reports by warehousemen.* Each warehouseman shall keep such records and furnish such reports to the State PMA office, in addition to the foregoing, as the State committee may find necessary to insure the proper identification of the marketings of tobacco and the collection of penalties due thereon as provided in §§ 726.430 to 726.460.

§ 726.452 *Dealer's records and reports.* Each dealer, except as provided in § 726.453, shall keep the records and make the reports as provided by this section.

(a) *Report of dealer's name, address, and registration number.* Each dealer shall properly execute and the field assistant shall detach and forward to the State PMA office "Receipt for Dealer's Record" contained in MQ-79—Tobacco which is issued to the dealer.

(b) *Record and report of purchases and resales.* Each dealer shall keep a record and make reports on MQ-79—Tobacco, Dealer's Record, showing all purchases and resales of tobacco made by or for the dealer and, in the event of resale of tobacco bought from a crop produced prior to 1953, the fact that such tobacco was bought by him and carried over from a crop produced prior to 1953.

(c) *Report of penalties.* Each dealer shall make a report on MQ-81—Tobacco, Report of Penalties, showing for each purchase of tobacco subject to penalty (1) the name of the farm operator; (2) the memorandum number; (3) the name of the county in which the farm is located; (4) the farm serial number; (5) the number of pounds purchased; (6) the applicable converted rate of penalty; and (7) the amount of penalty due on each such purchase. MQ-81—Tobacco shall be prepared for each week and forwarded together with remittance of the penalty due as shown thereon to the State PMA office not later than the end of the calendar week following the week in which the tobacco became subject to penalty.

(d) *Memorandum of sale and bill of nonwarehouse sale.* A bill of nonwarehouse sale and a memorandum of sale from the 1953 marketing card issued for the farm on which the tobacco was produced shall be obtained by a dealer to cover each purchase of tobacco directly from a producer other than at auction through a warehouse. No memorandum of sale shall be issued identifying such purchase unless the bill of nonwarehouse sale, on the reverse side of the memorandum of sale, has been executed.

(e) *Additional records.* Each dealer shall keep such records in addition to the foregoing as will enable him to furnish the State PMA office with respect to each lot of tobacco purchased by him the following information:

(1) The name of the warehouse through which the tobacco was purchased in the case of a warehouse sale; the name of the operator of the farm on which the tobacco was produced and

the name of the seller in the case of a nonwarehouse sale; and the name of the seller in the case of purchases directly from warehousemen or other dealers.

(2) Date of purchase.
(3) Number of pounds purchased.
(4) Gross purchase price.
(5) Amount of any penalty and the amount of any deduction on account of penalty from the price paid the producer(s); and with respect to each lot of tobacco sold by him the following information:

(6) Name of the warehouse through which the tobacco was sold in the case of a warehouse sale, and the name of the purchaser if other than a warehouse sale.

(7) Date of sale.
(8) Number of pounds sold.
(9) Gross sale price.

(10) In the event of a resale of tobacco bought by him and carried over from a crop produced prior to 1953 the fact that such tobacco was so bought and carried over.

(f) *Forwarding of reports.* All reports shall be forwarded to the State PMA office not later than the end of the week following the calendar week covered by the reports.

§ 726.453 *Dealers exempt from regular records and reports.* Any dealer or buyer who does not purchase or otherwise acquire tobacco except at warehouse sales, or directly from dealers other than warehousemen, and who does not resell in the form in which tobacco ordinarily is sold by farmers more than 10 percent of such tobacco so purchased by him shall not be subject to the provisions of § 726.452: *Provided, however,* That any such dealer or buyer who purchases tobacco at nonwarehouse sale or from a warehouseman other than at warehouse sale shall be subject to the provisions of § 726.452 with respect to such purchases. Each such dealer or buyer shall make such reports to the Director, in addition to the foregoing, as he may find necessary to enforce §§ 726.430 to 726.460 and each dealer or buyer who is not subject to the provisions of § 726.452 shall make such reports to the Director as he may find necessary to enforce §§ 726.430 to 726.460.

§ 726.454 *Records and reports of truckers and persons redrying, prizing, or stemming tobacco.* (a) Each person engaged to any extent in the business of trucking or hauling tobacco for producers to a point where it may be marketed or otherwise disposed of in the form and in the condition in which it is usually marketed by producers shall keep such records as will enable him to furnish the State PMA office a report with respect to each lot of tobacco received by him showing (1) the name and address of the producer, (2) the date of receipt of the tobacco, (3) the number of pounds received, and (4) the name and address of the person to whom it was delivered.

(b) (1) Each person engaged to any extent in the business of redrying, prizing, or stemming tobacco for producers shall keep such records as will enable him to furnish the Director a report showing (i) the information required

above for truckers, and in addition, (ii) the purpose for which the tobacco was received, (iii) the amount of advance made by him on the tobacco, and (iv) the disposition of the tobacco.

(2) Each such person shall make such reports to the Director as he may find necessary to enforce §§ 726.430 to 726.460.

§ 726.455 *Separate records and reports from persons engaged in more than one business.* Any person who is required to keep any records or make any report as a warehouseman, dealer, trucker, or as a person engaged in the business of redrying, prizing, or stemming tobacco for producers, and who is engaged in more than one such business, shall keep such records as will enable him to make separate reports for each such business in which he is engaged to the same extent for each such business as if he were engaged in no other business.

§ 726.456 *Failure to keep records or make reports.* Any warehouseman, dealer, trucker, or person engaged in the business of redrying, prizing, or stemming tobacco for producers, who fails to make any report or keep any record as required under §§ 726.430 to 726.460, or who makes any false report or record, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than \$500; and any tobacco warehouseman or dealer who fails to remedy such violation by making a complete and accurate report or keeping a complete and accurate record, as required under §§ 726.430 to 726.460, within fifteen days after notice to him of such violation shall be subject to an additional fine of \$100 for each ten thousand pounds of tobacco, or fraction thereof, bought or sold by him after the date of such violation: *Provided,* That such fine shall not exceed \$5,000; and notice of such violation shall be served upon the tobacco warehouseman or dealer by mailing the same to him by registered mail or by posting the same at an established place of business operated by him, or both. Notice of any violation by a warehouseman, dealer, trucker, or person engaged in the business of redrying, prizing or stemming tobacco for producers shall be given by the Director.

§ 726.457 *Examination of records and reports.* For the purpose of ascertaining the correctness of any report made or record kept, or of obtaining information required to be furnished in any report but not so furnished, any warehouseman, dealer, trucker, or person engaged in the business of redrying, prizing, or stemming tobacco for producers shall make available for examination upon written request by the State administrative officer or Director, such books, papers, records, accounts, cancelled checks, correspondence, contracts, documents, and memoranda as the State administrative officer or Director has reason to believe are relevant and are within the control of such person.

§ 726.458 *Length of time records and reports to be kept.* Records required to be kept and copies of reports required to be made by any person under §§ 726.430

to 726.460 for the 1953-54 marketing year, shall be kept by him until September 30, 1956. Records shall be kept for such longer period of time as may be requested in writing by the Director.

§ 726.459 Information confidential. All data reported to or acquired by the Secretary pursuant to the provisions of §§ 726.430 to 726.460 shall be kept confidential by all officers and employees of the United States Department of Agriculture, and by all members of county and community committees, and by all county PMA office employees, and only such data so reported or acquired as the Assistant Administrator for Production, Production and Marketing Administration, deems relevant shall be disclosed by them and then only in a suit or administrative hearing under Title III of the act.

§ 726.460 Redefinition of authority. Any authority delegated to the State committee by §§ 726.430 to 726.460 may be redelegated by the State committee.

NOTE: The record keeping and reporting requirements of these regulations have been approved by and subsequent reporting requirements will be subject to the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Done at Washington, D. C., this 8th day of June 1953. Witness my hand and the seal of the Department of Agriculture.

[SEAL] TRUE D. MORSE,
Acting Secretary of Agriculture.

[F. R. Doc. 53-5176; Filed, June 10, 1953;
8:52 a. m.]

[1026 (Peanuts-53)-1]

PART 729—PEANUTS

MARKETING QUOTA REGULATIONS FOR 1953 CROP

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AUTHORITY: §§ 729.440 to 729.469 issued under Sec. 375, 52 Stat. 66, as amended; 7 U. S. C. 1375. Interpret or apply Secs. 301, 358, 359, 361-368, 372, 373, 374, 376, 388, 52 Stat. 38, 62, 63, 64, 65, 66, 68, as amended; 55 Stat. 88, as amended, 66 Stat. 27; 7 U. S. C. 1301, 1358, 1359, 1361-1368, 1372, 1373, 1374, 1376, 1388.

GENERAL

§ 729.440 Basis and purpose. The regulations contained in §§ 729.440 to 729.469 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended, and govern the determination of farm peanut acreages, the issuance of marketing cards, the identification of peanuts, the collection and refund of penalties, and the records and reports incident thereto, on the marketing of peanuts of the 1953 crop, regardless of whether such peanuts are marketed before, during, or after the 1953-54 marketing year. Prior to preparing the regulations in §§ 729.440 to 729.469, public notice of their formulation was published in the FEDERAL REGISTER (18 F. R. 2107) in accordance with the Administrative Procedure Act (5 U. S. C. 1003). Views and recommendations received in response to such notice have been duly considered within the limits prescribed by the Agricultural Adjustment Act of 1938.

§ 729.441 Definitions. As used in §§ 729.440 to 729.469 and in all instructions, forms, and documents in connection therewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the context or subject matter otherwise requires.

(a) "Act" means the Agricultural Adjustment Act of 1938, as amended.

(b) "Assistant Administrator" means the Assistant Administrator for Production or the Acting Assistant Administrator for Production, Production and Marketing Administration, United States Department of Agriculture.

(c) "Buyer" means a person who:

(1) Buys or otherwise acquires any peanuts from a producer;

(2) Buys or otherwise acquires farmers stock peanuts from any person; or

(3) Markets, as a commission merchant or broker, any peanuts for the account of a producer and who is responsible to the producer for the amount received for the peanuts.

(d) Committees: (1) "Community committee" means the person elected within a community as the community committee, pursuant to the regulations

governing the selection and functions of the Production and Marketing Administration county and community committees.

(2) "County committee" means the persons elected within a county as the county committee, pursuant to the regulations governing the selection and functions of Production and Marketing Administration county and community committees.

(3) "State committee" means the persons designated in a State by the Secretary as the State committee of the Production and Marketing Administration.

(e) "Director" means the Director, or the Acting Director of the Fats and Oils Branch, Production and Marketing Administration, United States Department of Agriculture.

(f) "Excess acreage" means the acreage by which the farm peanut acreage exceeds the farm allotment but there will be no excess acreage if the farm peanut acreage is one acre or less.

(g) "Excess peanuts" means peanuts in excess of the farm marketing quota determines pursuant to § 729.446.

(h) "Farm" means all adjacent or nearby farmland under the same ownership which is operated by one person, including also:

(1) Any other adjacent or nearby farmland which the county committee, in accordance with instructions issued by the Assistant Administrator, determines is operated by the same person as part of the same unit with respect to the rotation of crops and with workstock, farm machinery, and labor substantially separate from that for any other lands; and

(2) Any field-rented tract (whether operated by the same or another person) which, together with any other land included in the farm, constitutes a unit with respect to the rotation of crops.

A farm shall be regarded as located in the county in which the principal dwelling is situated, or if there is no dwelling thereon, it shall be regarded as located in the county in which the major portion of the farm is located.

(i) "Farm allotment" means the farm peanut acreage allotment for the 1953 crop of peanuts established pursuant to §§ 729.410 to 729.432 of the marketing quota regulations for the 1953 crop of peanuts (17 F. R. 10611).

(j) "Farm peanut acreage" means the acreage on the farm planted to peanuts in 1953 as determined in accordance with instructions issued by the Assistant Administrator, less any such acreage with respect to which it is established by the operator or otherwise to the satisfaction of the county office manager that the entire production therefrom has not and will not be picked or threshed either before or after marketing from the farm: *Provided, however, That:*

(1) The farm peanut acreage shall be considered equal to the farm allotment on a farm for which such allotment equals or exceeds one acre, if the acreage in excess of the farm allotment from which peanuts are picked or threshed is not greater than one-tenth acre or three percent of the farm allotment, whichever is larger;

(2) The farm peanut acreage shall be considered equal to one acre on a farm for which the farm allotment is equal to or less than one acre and the acreage from which peanuts are picked or threshed does not exceed 1.1 acres; but the provisions of this subparagraph and of subparagraph (1) of this paragraph shall not apply unless a quantity of peanuts equal to the county office manager's estimate of the production from the acreage in excess of the larger of the farm allotment, or one acre, is disposed of on the farm in such manner that the peanuts cannot thereafter be used or marketed as peanuts: *Provided, further*, That the maximum acreage limit prescribed in this subparagraph or subparagraph (1) of this paragraph shall not be applicable if the State committee concurs in the findings and recommendations of the county committee that the unusual circumstances from which the excess resulted are such that the maximum limitation should not apply.

(k) "Farmers stock peanuts" means picked or threshed peanuts produced in the continental United States during the calendar year 1953 which have not been shelled, crushed, cleaned (except for removal of foreign material) or otherwise changed from the state in which picked or threshed peanuts are customarily marketed by producers.

(l) "Market" means to dispose of peanuts, including farmers stock peanuts, shelled peanuts, cleaned peanuts, or peanuts in processed form by voluntary or involuntary sale, barter, or exchange, or by gift inter vivos. Delivery of peanuts by a producer to a cooperative association of peanut producers for marketing shall constitute a marketing. The terms "marketed," "marketing," and "for market" shall have corresponding meanings to the term "market" in the connection in which they are used.

The terms "barter" and "exchange" shall include the payment by the producer of any quantity of peanuts for the harvesting, picking, threshing, cleaning, crushing, or shelling of peanuts, or for any other service rendered to him by anyone.

(m) "Marketing card": (1) "Excess penalty card" means MQ-77—Peanuts (1953), 1953 Peanut Excess Penalty Marketing Card. This card is issued for farms for which it is determined that the farm peanut acreage is in excess of the larger of the farm allotment or one acre. A portion of each lot of peanuts identified by this card is subject to the marketing penalty prescribed in § 729.455 at the time the peanuts are marketed.

(2) "Within quota card" means MQ-76—Peanuts (1953), 1953 Peanut Within Quota Marketing Card. This card is issued for farms for which it is determined that the farm peanut acreage is not in excess of the larger of the farm allotment or one acre. This card authorizes the marketing of all peanuts produced on the farm without payment at the time of marketing of the penalty prescribed in § 729.455.

(n) "Marketing year" means the 1953-54 marketing year beginning August 1, 1953, and ending July 31, 1954.

(o) "Operator" means the person who is in charge of the supervision and conduct of the farming operations on the entire farm.

(p) "Peanuts" means all peanuts produced, excluding any peanuts which were not picked or threshed either before or after marketing from the farm.

(q) "Person" means an individual, partnership, association, corporation, firm, joint-stock company, estate, or trust, or other business enterprise or other legal entity, and whenever applicable, a State, a political subdivision of a State, or any agency thereof.

(r) "Pound" means that quantity of farmers stock peanuts equal to one pound standard weight. If peanuts have been graded at the time of marketing, the poundage shall be the weight thereof excluding foreign material and excess moisture. If shelled peanuts are marketed, the poundage thereof shall be converted to the weight of farmers stock peanuts by multiplying the number of pounds of shelled peanuts by 1.5 and the result shall be the number of pounds considered as marketed under this part.

(s) "Producer" means a person who, as landlord, tenant, or sharecropper, is entitled to share in the peanuts produced on the farm or in the proceeds thereof.

(t) "Quota peanuts" means peanuts which are within the amount of the farm marketing quota determined pursuant to § 729.446.

(u) "Sales memorandum" means: (1) Form MQ-76-A—Peanuts (1953), five copies of which are attached to each within quota marketing card. This form may be used by buyers to record and report data with respect to purchases of peanuts identified by a within quota card.

(2) Form MQ-93—Peanuts (1953), which may be used (i) by buyers to record and report data with respect to purchases of peanuts identified by both within quota and excess penalty cards, and (ii) by shellers to record and report data with respect to peanuts shelled for producers in instances where all of the shelled peanuts are returned to the producer.

(3) Form MQ-77-A—Peanuts (1953), five copies of which are attached to each excess penalty card. This form may be used by buyers to record and report data with respect to purchases of peanuts identified by an excess penalty card.

(4) Form MQ-94—Peanuts (1952), which may be used by buyers to record and report data with respect to purchases of peanuts identified by a within quota card if the peanuts have been inspected by the Federal-State Inspection Service.

(5) Any other form furnished by the buyer for recording and reporting purchases of peanuts, provided (i) the State committee determines that the use of forms other than those enumerated in subparagraphs (1) through (4) of this paragraph will not operate to reduce effective administration of the program in the State and (ii) the form proposed for use by the buyer is approved by the State Administrative Officer of each State in which the buyer will purchase 1953-crop peanuts as being consecutively

numbered and containing the necessary language and spaces for recording and reporting the same information as that required by Form MQ-93—Peanuts (1953) for purchases of farmers stock peanuts.

(v) "Secretary" means the Secretary, or the Acting Secretary of Agriculture of the United States.

(w) "State Administrative Officer" means the person employed by the State committee to execute the policies of the State committee and be responsible for the day-to-day operations of the State PMA office, or the person acting in such capacity.

(x) "County Office Manager" means the person employed by the county committee to execute the policies of the county committee and be responsible for the day-to-day operations of the county PMA office, or the person acting in such capacity.

(y) "Yields": (1) "Normal yield" means the normal yield per acre for the farm as determined under § 729.423 or § 729.429, whichever is applicable, of the marketing quota regulations for the 1953 crop of peanuts (17 F. R. 10611).

(2) "Actual yield" means the actual yield per acre for the farm obtained by dividing the farm peanut acreage into the total production of peanuts for the farm.

§ 729.442 *Instructions and forms.* The Director shall cause to be prepared and issued such forms as are necessary and shall cause to be prepared such instructions as are necessary for carrying out the regulations in this part. The forms and instructions shall be approved by, and the instructions shall be issued by, the Assistant Administrator.

§ 729.443 *Extent of calculations and rule of fractions.* (a) The farm peanut acreage shall be expressed in tenths of an acre and fractions of less than one-tenth of an acre shall be dropped.

(b) The percentage of excess peanuts for a farm, hereinafter referred to as the "percent excess", shall be expressed in tenths of a percent and fractions of less than one-tenth of a percent shall be dropped, except that the minimum percent excess for a farm having any excess acreage shall be one-tenth of one percent.

(c) The converted penalty rate shall be expressed in tenths of a cent and fractions of less than a tenth of a cent shall be dropped, except that the minimum converted penalty rate for a farm having any excess acreage shall be one-tenth of a cent.

(d) The amount of penalty with respect to any lot of peanuts, or the amount of damages due Commodity Credit Corporation under an agreement made pursuant to § 729.459, shall be expressed as dollars and in whole cents. Fractions of less than a cent shall be dropped.

(e) The quantity of peanuts marketed, the farm marketing quota, and the normal and actual yield per acre, shall be expressed in whole pounds. Fractions of less than a pound shall be dropped.

IDENTIFICATION AND MEASUREMENT OF FARMS

§ 729.444 *Identification of farms.* Each farm as operated for the 1953 crop of peanuts shall be identified by a farm serial number and all records pertaining to marketing quotas for the 1953 crop of peanuts shall be identified by the farm serial number.

§ 729.445 *Measurement of farms.* The peanut acreage on farms shall be measured to determine compliance with farm allotments in accordance with instructions issued by the Assistant Administrator.

FARM MARKETING QUOTAS AND MARKETING CARDS

§ 729.446 *Amount of farm marketing quota.* (a) The farm marketing quota for a farm having no excess acreage shall be the actual production of peanuts on the farm peanut acreage.

(b) The farm marketing quota for a farm having excess acreage shall be a quantity of peanuts equal to the actual yield multiplied by the farm allotment.

§ 729.447 *Marketing quotas not transferable.* Farm marketing quotas are not transferable in whole or in part from one farm to another farm and peanuts produced on one farm shall not be marketed on a marketing card issued with respect to another farm. If any amount of peanuts produced on one farm is falsely identified by a representation that such peanuts were produced on another farm, the allotment next established for each such farm shall be reduced as provided in § 729.426 of the Marketing Quota Regulations for the 1953 Crop of Peanuts (17 F. R. 10611).

§ 729.448 *Issuance of marketing cards.* (a) A marketing card shall be issued to the operator of each farm having 1953-crop peanuts for use by any producer for marketing his share of the peanuts produced on the farm. If the county office manager finds that it will serve a useful purpose, additional marketing cards may be issued in the name of the operator and delivered to other producers on the farm or the marketing card may be issued in the name of the operator and one or more producers on the farm.

(b) If the county committee determines that such action is necessary to enforce the provisions of §§ 729.440 to 729.469, the issuance of marketing cards may be withheld for farms in which a multiple farm producer has an interest, if one or more of such farms are eligible for an excess penalty marketing card, until the committee provides for an estimate to be made of the peanut production on each farm in which the multiple farm producer has an interest. The estimated production on each such farm will be used in determining, after all peanuts produced on such farms have been marketed or otherwise disposed of, whether the marketing card issued for each farm was properly used. The term "multiple farm producer" means a person who has an interest as a producer in the 1953 crop of peanuts on more than one farm.

(c) All entries on each marketing card shall be made in accordance with the instructions for issuing marketing cards. Upon return to the office of the county Production and Marketing Administration office (hereinafter referred to as "county PMA office"), of any marketing card where all spaces for recording sales have been used and before the marketing of peanuts from the farm has been completed, a new marketing card of the same kind, bearing the same name, information, and identification as the used card shall be issued. A new marketing card of the same kind shall also be issued to replace a card which has been determined by the county office manager to have been lost, destroyed, mutilated, or stolen.

(d) Within quota card: A farm is eligible for a within quota card under any one of the following conditions:

(1) The farm has no excess acreage.
(2) The acreage planted to peanuts on the farm is in excess of the farm allotment but an agreement on Form MQ-92—Peanuts (1953) is executed and approved in accordance with § 729.459.

(3) The farm has excess acreage which consists of (i) peanuts grown only for experimental purposes on land owned or leased by a publicly owned agricultural experiment station and are produced at public expense by employees of the experiment station, or (ii) peanuts produced by farmers pursuant to an agreement with a publicly owned experiment station whereby the experiment station bears the cost and risks incident to the production of the peanuts and the proceeds from the crop inure to the benefit of the experiment station. Any such agreement must be approved by the State committee prior to the issuance of a marketing card for the farm.

(e) Excess penalty card: An excess penalty card shall be issued for a farm if the peanut acreage exceeds the larger of the farm allotment or one acre and the farm is not eligible for a within quota card under paragraph (d) of this section.

§ 729.449 *Person authorized to issue cards.* The county office manager shall sign marketing cards for farms in the county as issuing officer. The issuing officer may designate not more than three persons to sign his name in issuing marketing cards: *Provided*, That each person so designated shall place his initials immediately beneath the name of the issuing officer as written by him or stamped on the card.

§ 729.450 *Successors-in-interest.* Any person who succeeds in whole or in part to the share of a producer in the peanuts to be marketed from a farm shall, to the extent of such succession, have the same rights as the producer to the use of any marketing card issued for the farm.

§ 729.451 *Invalid marketing cards.* (a) A marketing card shall be invalid if:

(1) It is not issued or delivered in the form and manner prescribed;
(2) Entries are omitted, incorrect, contradictory, or illegible;
(3) It is lost, destroyed, or stolen;
(4) Any erasure or alteration has been made and not properly initialed; or

(5) The converted penalty rate on an excess penalty card has been altered.

(b) If any marketing card becomes invalid (other than by loss, destruction, or theft) the operator, or the person having the card in his possession, shall return it to the county PMA office from which it was issued. If any marketing card is lost, destroyed, or stolen, the producer to whom the card was issued shall give written notice of such fact to the county PMA office from which the card was issued.

(c) If a marketing card becomes invalid because an entry is not made as required either through omission or incorrect entry, and the proper entry is later made and initialed as provided in the instructions for issuing marketing cards, then such card shall become valid; or if the invalid card is not made valid in this manner, it shall be cancelled and a new card issued in its place.

§ 729.452 *Report of misuse of marketing card.* Any information which causes a member of a State, county, or community committee, or an employee of a State or county PMA office, or any person engaged in buying or handling peanuts, to believe that any peanuts have been or are being marketed on a marketing card issued for another farm or to another producer shall be reported immediately by such committeeman, employee, or person to the county PMA office or to the State office of the Production and Marketing Administration (hereinafter referred to as the "State PMA office").

MARKETING OR OTHER DISPOSITION OF PEANUTS AND PENALTIES

§ 729.453 *Extent to which marketings from a farm are subject to penalty.* The penalty for a farm having excess acreage shall be determined as follows:

(a) If the peanuts produced on the farm are properly marketed with an excess penalty card issued for the farm, the penalty shall be paid on each lot of peanuts marketed from the farm in an amount determined by multiplying the converted penalty rate for the farm by the number of pounds in the lot.

(b) If the peanuts produced on the farm are not properly marketed with an excess penalty card issued for the farm but the disposition of the peanuts produced on the farm is accounted for to the satisfaction of the State committee, the total amount of penalty for the farm shall be determined by multiplying the total quantity of peanuts marketed from the farm by the converted penalty rate for the farm.

(c) If the disposition of peanuts produced on the farm is not accounted for to the satisfaction of the State committee or if any amount of peanuts produced on one farm is falsely identified by a representation that such peanuts were produced on another farm, the total amount of penalty for the farm shall be determined by multiplying the normal yield by the excess acreage by the basic penalty rate.

(d) If the representative of the county committee is prevented by the operator or other producer or person from determining the farm peanut acreage, the

farm will be deemed to have excess acreage and the penalty for the farm shall be determined by multiplying the quantity of peanuts marketed from the farm by the basic penalty rate. If, however, the operator furnishes a complete and correct report containing the information specified in § 729.461 (b), the penalty for the farm shall be determined in accordance with paragraph (b) of this section.

(e) Notwithstanding the foregoing provisions of this section, the penalty will not be applicable to the shriveled, damaged, split, and broken peanut kernels which are obtained in the process of shelling farmers stock peanuts of the 1953-crop for use by the producer as seed in 1954 if the quantity of peanuts shelled by or for the producer is in line with the seed requirements for his farm in 1954 as determined by the county office manager.

§ 729.454 Identification of marketing.

(a) Each marketing of peanuts from a farm shall be recorded by the buyer or his representative on a marketing card issued for the farm on which the peanuts were produced, if such marketing card is presented to the buyer by the producer at the time the peanuts are marketed. Each marketing of peanuts without a marketing card shall be subject to the penalty at the rate prescribed in § 729.455 (a) unless the marketing consists of shriveled, damaged, split, and broken peanut kernels which were produced in shelling not in excess of that quantity of farmers stock peanuts for a producer which the county office manager determines is reasonable for seed purposes on the producer's farm for the 1954 crop. The marketing of such shriveled, damaged, split, and broken peanut kernels that are not identified by marketing cards will be identified by Form MQ-93-Peanuts (1952) partially executed by the county office manager to show the quantity of peanuts that is reasonable for seed purposes on the producer's farm for the 1953 crop. Buyers will record and report purchases of shelled peanuts from producers on Form MQ-91-Peanuts (1953): *Provided, however*, That a person who is not engaged in the business of buying peanuts for movement into the regular channels of trade shall not be required to make a record and report of purchases of peanuts from producers of the county committee has determined that it would be administratively impracticable to require such buyer to execute forms, keep the records, and make the buyer's report as required in §§ 729.440 to 729.469, in which case the producer marketing the peanuts shall be responsible for reporting each marketing to the county PMA office as provided in § 729.456.

(b) A buyer who resells any farmers stock peanuts of the 1953-crop shall keep, as part of or in addition to the records maintained by him in the conduct of his business, such records as he determines are necessary to enable him to certify, in connection with any such resale of farmers stock peanuts, that such peanuts were identified to him by valid marketing cards when purchased from farmers and that any penalty due

was collected and remitted. The records maintained by the buyer with respect to such peanuts shall be available for examination in accordance with § 729.466.

§ 729.455 *Rate of penalty.* (a) The basic penalty rate shall be equal to 50 percent of the basic rate of the loan or support price for peanuts for the marketing year.

NOTE: The exact amount of the penalty rate for peanuts of the 1953 crop will be issued as an amendment to this section as soon as the basic rate of the loan or support price for 1953 is announced.

(b) The converted penalty rate for a farm shall be determined as follows:

(1) Compute the percent excess for a farm by dividing the farm peanut acreage into the excess acreage.

(2) Multiply the percent excess for the farm by the basic penalty rate.

§ 729.456 *Persons to pay penalty.* (a) The penalty due on peanuts purchased directly from a producer shall be paid by the buyer who may deduct an amount equivalent to the penalty from the price paid to the producer, except that the penalty due on marketings by a producer directly to any person outside the United States shall be paid by the producer. The buyer shall not be relieved of any liability with respect to the amount of penalty because of any error which may occur in executing a sales memorandum. If the buyer fails to collect or to pay the penalty due on any marketing of peanuts from a farm, he and all producers on the farm shall be jointly and severally liable for the amount of the penalty.

(b) Notwithstanding any other provisions of §§ 729.440 to 729.469, if the county office manager finds that peanuts produced on a farm on which there is excess acreage have been or probably will be sold to persons who are not engaged in the business of buying peanuts for movement into the regular channels of trade and determines that it would be administratively impracticable to effect the collection of the marketing penalty from such persons, the county office manager may, on the basis of county office records or other available information, estimate the actual yield and the production for the farm and determine the amount of penalty due on the quantity of peanuts marketed to such persons. The amount of penalty shall be determined by multiplying the converted penalty rate by the total production for the farm. The amount of penalty may be collected from the operator or producer before the marketing card is issued if he agrees to payment of the penalty in this manner. If the county office manager determines that satisfactory information is not available for estimating the 1953 actual yield, a normal yield for the farm shall be determined and it shall be considered to be the estimated actual yield for the purpose of determining the amount of penalty. An excess penalty card shall be issued for the farm. If the penalty is paid before the excess penalty card is issued, the penalty rate on the card shall be shown as "zero." If the county committee determines, after marketing of the 1953 crop for the farm has been com-

pleted, that the actual production for the farm was less than the estimated production, any penalty paid in excess of the amount actually due shall be refunded upon presentation of a request therefor as provided in § 729.460.

§ 729.457 *Marketings subject to penalty.* In addition to marketings subject to penalty that are identified by excess penalty cards, the marketing of peanuts under any of the following conditions shall be deemed to be a marketing subject to penalty at the rate prescribed in § 729.455.

(a) *Producer marketings.* (1) Any marketing of peanuts by a producer which is not identified by a valid marketing card shall be deemed to be a marketing subject to penalty at the rate prescribed in § 729.455 (a) unless the peanuts marketed consist of shriveled, damaged, split, and broken peanut kernels as described in § 729.454 (a) or unless the marketing is within the terms of the proviso contained in § 729.454 (a). The penalty due under the provisions of this paragraph shall be determined by multiplying the pounds marketed by the basic penalty rate, and such amount of penalty shall be paid by the buyer who may deduct an amount equivalent to the penalty from the amount due the producer.

(2) Notwithstanding the provisions of § 729.453, if any producer falsely identifies or fails to account for the disposition of any peanuts produced on a farm, an amount of peanuts equal to the normal yield of the excess acreage for the farm shall be deemed to have been a marketing subject to penalty from such farm. The penalty for the farm shall be determined by multiplying the normal yield by the excess acreage by the basic penalty rate, and such amount of penalty shall be paid by the producer.

(b) *Buyer's marketings.* The part or all of any marketing of peanuts by a buyer which such buyer represents to be a resale, but which when added to prior resales by such buyer, is in excess of the total amount of his prior purchases shall be deemed to be a marketing subject to penalty unless and until such buyer furnishes proof acceptable to the State committee showing that such marketing is not a marketing subject to penalty. Any penalty due under this paragraph shall be paid by the buyer making the resale.

(c) *Marketings not reported.* Any marketing of peanuts which, under the regulations in §§ 729.440 to 729.469, a buyer is required to report, but which is not so reported within the time and in the manner therein required, shall be deemed to be a marketing subject to penalty unless and until such buyer furnishes a report of such marketing which is acceptable to the State committee. The penalty shall be determined by multiplying the pounds marketed by the basic penalty rate, and such amount of penalty shall be paid by the buyer who fails to make the report as required.

§ 729.458 *Payment of penalty.* Penalties shall become due at the time the peanuts are marketed and shall be paid by remitting the amount thereof to the State PMA office not later than the end of two calendar weeks following the

week in which the peanuts became subject to penalty. A draft, money order, or check drawn payable to the Treasurer of the United States may be used to pay any penalty, but any such draft or check shall be received subject to collection and payment at par.

§ 729.459 Use of agreement to permit marketings from overplanted farms—

(a) *Within quota card issued on basis of agreement.* If the State committee determines that the agreement provided for in this section will serve a useful purpose, it may authorize its use in the State. Where the use of the agreement is authorized, the county office manager may, upon request of the operator of any farm on which the acreage planted to peanuts exceeds the farm allotment, issue a within quota card with respect to the farm in the manner prescribed in § 729.448 if the operator executes an agreement form in which he represents that the farm peanut acreage will not exceed the larger of the farm allotment or one acre and such form is approved by the county committee.

(b) *Form of agreement.* The agreement referred to in this section shall be on Form MQ-92—Peanuts (1953) executed in accordance with instructions issued by the Assistant Administrator. If the county committee determines that a within quota card issued pursuant to this section would be used as a device to evade the payment of penalty or the terms and conditions of the 1953-crop price support program, the agreement shall not be approved by the county committee and a marketing card shall not be issued for the farm until the farm peanut acreage has been determined.

(c) *Payment of penalty.* If any penalty becomes due for a farm for which an agreement has been executed and approved, the amount of the penalty shall be determined in accordance with § 729.453. At the request of the county office manager, the operator shall surrender the marketing card issued for the farm showing thereon the required record of all peanuts marketed. After collecting the amount of any penalty due, an excess penalty card shall be issued for the farm if marketings from the farm have not been completed.

§ 729.460 Request for refund of penalty. After the marketing of peanuts from the farm has been completed and the disposition of any other peanuts produced on the farm can be shown, the producer or any other person who bore the burden of the payment of any penalty may request the return of the amount of such penalty which is in excess of the amount required under §§ 729.440 to 729.469 to be paid. Such request shall be filed with the county PMA office within two years after the payment of the penalty. No refund shall be made because of peanuts kept on the farm for seed or for home consumption.

RECORDS AND REPORTS

§ 729.461 Producer's records and reports—(a) Report on marketing card. Each marketing card issued with respect to a farm on which peanuts are produced in 1953 shall be returned to the county PMA office whenever marketings from

the farm are completed or at such earlier time as the county office manager may request. Failure to return the marketing card shall constitute failure to account for disposition of peanuts marketed from the farm in the event that a satisfactory account of such disposition is not furnished otherwise, and the allotment next established for such farm shall be reduced as provided in § 729.426 of the Marketing Quota Regulations for Peanuts of the 1953 Crop (17 F. R. 10611).

(b) *Additional reports by producers.* (1) In addition to any other reports which may be required under §§ 729.440 to 729.469, the operator of each farm or any other producer on the farm (even though the farm has no excess acreage) shall, upon written request from the State administrative officer sent by registered mail to such person at his last known address, furnish the Secretary a written report of the disposition made of all peanuts produced on the farm by sending the same to the State PMA office within 15 days after the request for such report was deposited in the United States mails. Such written report shall show for the farm:

- (i) The farm peanut acreage;
- (ii) The total production of peanuts on the farm peanut acreage;
- (iii) The name and address of the buyer to or through whom each lot of peanuts was marketed, the number of pounds marketed in each lot, and the date marketed;
- (iv) The amount of peanuts not marketed; and
- (v) In the case of a farm for which an agreement was approved under § 729.459, the gross price received for each lot of peanuts.

(2) Failure to file the report as requested or the filing of a report which is found by the State committee to be incomplete or incorrect shall constitute failure of the producer to account for disposition of peanuts produced on the farm and the allotment next established for such farm shall be reduced as provided in § 729.426 of the Marketing Quota Regulations for Peanuts of the 1953 Crop (17 F. R. 10611).

§ 729.462 Records and reports of buyers and others. The following paragraphs shall apply to all marketings except marketings within the terms of the proviso contained in § 729.454 (a):

(a) *Record of marketings.* (1) Each buyer shall keep such records as will enable him to furnish the State PMA office the following information with respect to each lot of peanuts marketed to or through him by a producer:

- (i) Serial number of the marketing card presented by the producer to identify each marketing.
- (ii) Name of producer and either the name of the operator of the farm or the farm serial number.
- (iii) Date of marketing.
- (iv) Number of pounds marketed.
- (v) Amount of any penalty due and the amount of any deduction for penalty from the price paid the producer.

(2) This record may be kept by the buyer maintaining a file of his copies of sales memoranda.

(3) Records of all resales of farmers stock peanuts by the buyer shall be maintained and the name of each person to whom such resale was made shall be shown on the buyer's record in accordance with § 729.454 (b).

(b) *Sales memorandum.* Buyers will record and report each purchase of farmers stock peanuts on a sales memorandum. The PMA copies of sales memoranda, with remittances covering the penalties due on purchases of excess peanuts, shall be forwarded to the State PMA office by means of MQ-79—Peanuts (1952), Buyers Weekly Report, and Transmittal to State PMA office, not later than the end of two calendar weeks following the week in which the peanuts were marketed.

(c) *Sheller's report of shelled peanuts purchased or acquired from producers.* Persons who shell peanuts for producers and purchase or retain a quantity of the shelled peanuts shall record and report such purchases or acquisitions of shelled peanuts from producers on Form MQ-91—(Peanuts), Sheller's Report of Peanuts Shelled for Producers. The PMA copy of Form MQ-91—(Peanuts) with remittances covering the penalty due on the purchase of excess peanuts subject to penalty shall be forwarded to the State PMA office not later than the end of two calendar weeks after the buyer has ceased purchasing shelled peanuts of the 1953 crop.

(d) *Additional records and reports.* Each buyer, warehouseman, processor, or common carrier of peanuts, any broker or dealer in peanuts, any agent marketing peanuts for a producer or acquiring peanuts for a buyer or dealer, any peanut growers cooperative association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts, or manufacturing peanut products, or any person owning or operating a peanut picking or peanut threshing machine shall keep such records and furnish such reports to the State PMA office, in addition to the foregoing, as the State committee may find necessary to insure the proper identification of the marketings of peanuts and the collection of penalties due thereon as provided in §§ 729.440 to 729.469.

§ 729.463 Record and report of peanuts shelled for producers. Any person who shells peanuts for a producer and does not retain any of the shelled peanuts shall make a record of the shelling of each lot of such peanuts by executing Form MQ-93—Peanuts (1952) and shall forward the PMA copies of the form to the State PMA office by means of a personal letter not later than two calendar weeks following the week in which the peanuts are shelled. If any of the shelled peanuts are retained by the seed sheller, such action constitutes a marketing and the buyer shall record and report data covering the purchase of the shelled peanuts as provided in § 729.462 (c).

§ 729.464 Separate records and reports from persons engaged in more than one business. Any person who is required to keep any record or make any report as a buyer, processor, or other person engaged in the business of shell-

ing or crushing peanuts, and who is engaged in more than one such business shall keep such records as will enable him to make separate reports for each such business in which he is engaged to the same extent for each such business as if he were engaged in no other business.

§ 729.465 *Failure to keep records or make reports.* Any buyer, warehouseman, processor, or common carrier of peanuts, any broker or dealer in peanuts, any agent marketing peanuts for a producer or acquiring peanuts for a buyer or dealer, any peanut growers cooperative association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts, or manufacturing peanut products, or any person owning or operating a peanut picking or peanut threshing machine, who fails to make any report or keep any record as required in accordance with §§ 729.440 to 729.469, or who makes any false report or record, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than \$500.

§ 729.466 *Examination of records and reports.* Any buyer, warehouseman, processor, or common carrier of peanuts, any broker or dealer in peanuts, any agent marketing peanuts for a producer or acquiring peanuts for a buyer or dealer, any peanut growers cooperative association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts, or manufacturing peanut products, or any person owning or operating a peanut picking or threshing machine, shall make available for examination upon written request by the State administrative officer or the Director, such books, papers, records, accounts, correspondence, contracts, documents, and memoranda as the State administrative officer or the Director has reason to believe are relevant to any matter under investigation in connection with enforcement of the program and which are within the control of such person.

§ 729.467 *Length of time records and reports to be kept.* Records required to be kept and copies of reports required to be made by any person in accordance with §§ 729.440 to 729.469 for the 1953-54 marketing year shall be kept by him until July 31, 1956. Records shall be kept for such longer period of time as may be requested in writing by the Director.

MISCELLANEOUS

§ 729.468 *Information confidential.* All data reported to or as required by the Secretary pursuant to the provisions of §§ 729.440 to 729.469 shall be kept confidential by all officers and employees of the United States Department of Agriculture and by all members and employees of State or county committees, and only such data so reported or acquired as the Assistant Administrator deems relevant shall be disclosed by them and then only in a suit or administrative hearing under Title III of the act.

§ 729.469 *Redelegation of authority.* Any authority delegated to the State committee by the regulations in

§§ 729.440 to 729.469 may be redelegated by the State committee.

NOTE: The record-keeping and reporting requirements of these regulations have been approved by, and subsequent reporting requirements will be subject to the approval of, the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Done at Washington, D. C., this 8th day of June 1953. Witness my hand and the seal of the Department of Agriculture.

[SEAL] TRUE D. MORSE,
Acting Secretary of Agriculture.

[F. R. Doc. 53-5195; Filed, June 10, 1953;
8:56 a. m.]

Chapter IX—Production and Marketing Administration (Marketing Agreements and Orders), Department of Agriculture

PART 936—FRESH BARTLETT PEARS, PLUMS, AND ELBERTA PEACHES GROWN IN CALIFORNIA

FINDINGS AND DETERMINATIONS RELATIVE TO EXPENSES TO BE INCURRED AND FIXING OF RATES OF ASSESSMENT FOR 1953-54 SEASON

On May 13, 1953, notice of proposed rule making was published in the FEDERAL REGISTER (18 F. R. 2757) regarding the expenses and the fixing of the rates of assessment for the 1953-54 season pursuant to the marketing agreement, as amended, and Order No. 36, as amended (7 CFR Part 936: 18 F. R. 712) regulating the handling of fresh Bartlett pears, plums, and Elberta peaches grown in the State of California. This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.). After consideration of all relevant matters presented, including the proposals which were submitted by the Control Committee (established pursuant to said amended marketing agreement and order) and set forth in the aforesaid notice, it is hereby found and determined that:

§ 936.207 *Expenses and rates of assessment for the 1953-54 season—(a) Expenses.* The expenses likely to be incurred by the Control Committee during the 1953-54 season for the maintenance and functioning of such committee and the respective commodity committees, established pursuant to the provisions of the aforesaid amended marketing agreement and order (§ 936.1 to 936.90), are as follows:

- (1) Bartlett pears, \$24,483.80;
- (2) Early varieties of plums, \$16,207.88;
- (3) Late varieties of plums, \$18,770.09, and
- (4) Elberta peaches, \$19,109.48.

(b) *Rates of assessment.* The following rates of assessment, which each handler shall pay in accordance with the applicable provisions of said amended marketing agreement and order, are hereby fixed as the respective handler's pro rata share of the aforesaid expenses:

- (1) 8½ mills (\$0.0085) per standard western pear box of Bartlett pears, or

its equivalent in other containers or in bulk;

- (2) 9 mills (\$0.009) per standard four-basket crate of early varieties of plums, or its equivalent in other containers or in bulk;

- (3) 9 mills (\$0.009) per standard four-basket crate of late varieties of plums, or its equivalent in other containers or in bulk, and

- (4) 4 mills (\$0.004) per California peach box of Elberta peaches, or its equivalent in other containers or in bulk.

It is hereby further found that it is impracticable and contrary to the public interest to postpone the effective date hereof until 30 days after publication in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) in that (1) the respective rates of assessment are applicable to all fresh Bartlett pears, early varieties of plums, late varieties of plums, and Elberta peaches shipped during the 1953-54 season; (2) shipments of plums have already commenced and shipments of Elberta peaches are expected to begin on or about June 20, 1953, with shipments of Bartlett pears following on or about July 1, 1953; (3) the provisions hereof do not impose any obligation on a handler until such handler ships plums, Elberta peaches or Bartlett pears; and (4) it is essential that the specification of the assessment rates be issued immediately so that the aforesaid assessment may be collected and thereby enable the said Control Committee and commodity committees to perform their duties and functions in accordance with said amended marketing agreement and order.

Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Supp. 608c)

Done at Washington, D. C., this 8th day of June 1953.

[SEAL] TRUE D. MORSE,
Acting Secretary of Agriculture.

[F. R. Doc. 53-5179; Filed, June 10, 1953;
8:53 a. m.]

TITLE 14—CIVIL AVIATION

Chapter II—Civil Aeronautics Administration, Department of Commerce

[Amdt. 12]

PART 600—DESIGNATION OF CIVIL AIRWAYS ALTERATIONS

The civil airway alterations appearing hereinafter have been coordinated with the civil operators involved, the Army, the Navy, and the Air Force, through the Air Coordinating Committee, Air-space Subcommittee and are adopted to become effective when indicated in order to promote safety of the flying public. Compliance with the notice, procedures, and effective date provisions of section 4 of the Administrative Procedure Act would be impracticable and contrary to

public interest and therefore is not required.

Part 600 is amended as follows:

1. Section 600.246 is amended by changing caption to read: "Red civil airway No. 46 (United States-Canadian Border to Rochester, Minn.)", and by amending the first portion to read: "That airspace over United States territory from the Regina, Saskatchewan, Canada, radio range station via the Minot, N. Dak., radio range station; Jamestown, N. Dak., radio range station; Aberdeen, S. Dak., radio range station to the Watertown, S. Dak., radio range station."

2. Section 600.645 is added to read:

§ 600.645 *Blue civil airway No. 45 (Greenfield, Mass., to Lebanon, N. H.)*. From the intersection of the north course of the Westfield, Mass., radio range and the southeast course of the Concord, N. H., radio range via the Keene, N. H., non-directional radio beacon (located at lat. 42°50'45", long. 72°16'20") to the Lebanon, N. H., non-directional radio beacon.

3. Section 600.6004 *VOR civil airway No. 4 (Seattle, Wash., to Washington, D. C.)* is amended between Boise, Idaho, omnirange station and Malad City, Idaho, omnirange station to read: "Boise, Idaho, omnirange station; intersection of the Boise omnirange 129° True and the Burley omnirange 292° True radials; Burley, Idaho, omnirange station; Malad City, Idaho, omnirange station;"

4. Section 600.6007 is amended by changing the caption to read: "VOR civil airway No. 7 (Miami, Fla., to Green Bay, Wis.)", and by changing all after Chicago Heights, Ill., omnirange station to read: "Chicago Heights, Ill., omnirange station, including an east and a west alternate; intersection of the Chicago Heights omnirange 342° True and the Milwaukee omnirange 179° True radials; Milwaukee, Wis., omnirange station to the Green Bay, Wis., omnirange station."

5. Section 600.6010 *VOR civil airway No. 10 (Pueblo, Colo., to New York, N. Y.)* is amended by changing all before Garden City, Kans., omnirange station to read: "That airspace over United States territory from the Pueblo, Colo., omnirange station via the Lamar, Colo., omnirange station, including a north alternate;"

6. Section 600.6014 *VOR civil airway No. 14 (Roswell, N. Mex., to Boston, Mass.)* is amended by changing all before Childress, Tex., omnirange station to read: "That airspace over United States territory from the Roswell, N. Mex., omnirange station via the Lubbock, Tex., omnirange station, including a north alternate;"

7. Section 600.6026 is amended by changing the caption to read: "VOR civil airway No. 26 (Rapid City, S. Dak., to Muskegon, Mich.)", and by changing all after Redwood Falls, Minn., omnirange station to read: "Redwood Falls, Minn., omnirange station, including a south alternate; Minneapolis, Minn., omnirange station, including a south alternate; Eau Claire, Wis., omnirange station; Wausau, Wis., omnirange station, including a south alternate; Green Bay, Wis., omnirange station, including a

south alternate; intersection of the Green Bay omnirange 125° True and the Muskegon omnirange 323° True radials to the Muskegon, Mich., omnirange station."

8. Section 600.6027 *VOR civil airway No. 27 (Santa Barbara, Calif., to Seattle, Wash.)* is amended by changing all after Crescent City, Calif., omnirange station to read: "Crescent City, Calif., omnirange station; North Bend, Ore., omnirange station; Newport, Ore., omnirange station; Hoquiam, Wash., omnirange station to the Seattle, Wash., omnirange station, excluding the portion above 14,500 feet which lies beneath, and conflicts with, the Olympic Peninsula Danger Area (D-241)."

9. Section 600.6040 is amended to read:

§ 600.6040 *VOR civil airway No. 40 (Flint, Mich., to Pittsburgh, Pa.)*. That airspace over United States territory from the intersection of the Lansing omnirange 071° True and the Detroit, Mich., omnirange 343° True radials via the Detroit, Mich., omnirange station; intersection of the Detroit omnirange 143° True and the Mansfield, Ohio, omnirange 345° True radials; intersection of the Mansfield, Ohio, omnirange 345° True radial and the west course of the Wellington, Ohio, VHF VAR station; Wellington, Ohio, VHF VAR station; the intersection of the Cleveland omnirange 132° True radial and the east course of the Wellington, Ohio, VHF VAR station; the intersection of the Cleveland 132° True and the Pittsburgh 291° True radials to the Pittsburgh, Pa., omnirange station.

10. Section 600.6042 *VOR civil airway No. 42 (Naperville, Ill., to Pittsburgh, Pa.)* is amended by changing all before Detroit, Mich., omnirange station to read: "That airspace over United States territory from the Naperville, Ill., omnirange station via the Pullman, Mich., omnirange station;"

11. Section 600.6046 is amended to read:

§ 600.6046 *VOR civil airway No. 46 (Detroit, Mich., to Mansfield, Ohio)*. That airspace over United States territory from the Detroit, Mich., omnirange station via the intersection of the Detroit omnirange 143° True and the Mansfield omnirange 345° True radials to the Mansfield, Ohio, omnirange station.

12. Section 600.6066 *VOR civil airway No. 66 (San Diego, Calif., to Midland, Tex.)* is amended by changing all before Yuma, Ariz., omnirange station to read: "That airspace over United States territory from the San Diego, Calif., omnirange station via the intersection of the San Diego omnirange 108° True and the Yuma omnirange 267° True radials;"

13. Section 600.6068 *VOR civil airway No. 68 (Albuquerque, N. Mex., to Brownsville, Tex.)* is amended by changing all before Roswell, N. Mex., omnirange station to read: "That airspace over United States territory from the Albuquerque, N. Mex., omnirange station via the Corona, N. Mex., omnirange station, including a north alternate via the intersection of the Albuquerque omnirange 103° True and the Corona omnirange 328° True radials;"

14. Section 600.6098 *VOR civil airway No. 98 (San Francisco, Calif., to Bakersfield, Calif.)* is revoked.

15. Section 600.6107 is amended to read:

§ 600.6107 *VOR civil airway No. 107 (Santa Barbara, Calif., to San Francisco, Calif.)*. From the Santa Barbara, Calif., omnirange station via the Bakersfield, Calif., omnirange station; Coalinga, Calif., omnirange station to the San Francisco, Calif., omnirange station.

16. Section 600.6129 is added to read:

§ 600.6129 *VOR civil airway No. 129 (La Crosse, Wis., to Eau Claire, Wis.)*. From the La Crosse, Wis., omnirange station to the Eau Claire, Wis., omnirange station.

(Sec. 205, 52 Stat. 984, as amended; 49 U. S. C. 425. Interpret or apply sec. 302, 52 Stat. 985, as amended; 49 U. S. C. 452)

This amendment shall become effective 0001, e. s. t., June 9, 1953.

[SEAL]

F. B. LEE,

Administrator of Civil Aeronautics.

[F. R. Doc. 53-5148; Filed, June 10, 1953; 8:45 a. m.]

[Amdt. 11]

PART 601—DESIGNATION OF CONTROL AREAS, CONTROL ZONES, AND REPORTING POINTS

ALTERATIONS

The control area, control zone and reporting point alterations appearing hereinafter have been coordinated with the civil operators involved, the Army, the Navy and the Air Force, through the Air Coordinating Committee, Airspace Subcommittee, and are adopted to become effective when indicated in order to promote safety of the flying public. Compliance with the notice, procedures, and effective date provisions of section 4 of the Administrative Procedure Act would be impracticable and contrary to public interest and therefore is not required.

Part 601 is amended as follows:

1. Section 601.9 is amended as follows:

§ 601.9 *Extent of control areas*. Points or intersections prescribed in designating control areas frequently coincide with points or intersections specified in designating the centerline of civil airways. In such cases the control areas shall include all of the airspace within 5 miles either side of a straight line extended through the center of the points or intersections specified in designating the civil airways and all of the airspace within a 5-mile radius of such points or intersections unless otherwise provided in Subpart B, (§§ 601.11 through 601.1000), Subpart C (§§ 601.1001 through 601.1980), and Subpart F (§§ 601.6001 through 601.6999). In addition, such control areas shall include all the airspace between straight lines connecting the center of the points or intersections specified in designating the main and associated alternate VOR civil airways, unless otherwise specified.

2. Section 601.246 is amended by changing the caption to read: "Red civil

airway No. 46 control areas (United States-Canadian Border to Rochester, Minn.)."

3. Section 601.645 is added to read:

§ 601.645 *Blue civil airway No. 45 control areas (Greenfield, Mass., to Lebanon, N. H.).* All of Blue civil airway No. 45.

4. Section 601.1335 is added to read:

§ 601.1335 *Control area extension (Lafayette, La.).* Within 5 miles either side of the 352° True radial of the Lafayette omnirange extending from the omnirange station to a point 15 miles north, and within 5 miles either side of a line bearing 7° True from the Lafayette non-directional radio beacon extending from the beacon to a point 15 miles north.

5. Section 601.1336 is added to read:

§ 601.1336 *Control area extension (Eau Claire, Wis.).* That airspace within a 15-mile radius of the Eau Claire omnirange station and within 5 miles either side of the 04° True radial of the omnirange extending from the omnirange station to a point 20 miles north.

6. Section 601.1337 is added to read:

§ 601.1337 *Control area extension (Wausau, Wis.).* That airspace within a 15-mile radius of the Wausau omnirange station and within 5 miles either side of the 166° True radial of the Wausau omnirange extending from the omnirange station to a point 20 miles south-east.

7. Section 601.1338 is added to read:

§ 601.1338 *Control area extension (Green Bay, Wis.).* That airspace within a 15-mile radius of the Green Bay omnirange station and within 5 miles either side of the 322° True radial of the Green Bay omnirange extending from the omnirange station to a point 20 miles northwest.

8. Section 601.1339 is added to read:

§ 601.1339 *Control area extension (Oshkosh, Wis.).* All that airspace bounded on the east by VOR civil airway No. 7, on the south by the arc of a circle with a radius of 50 miles from the Green Bay, Wis., omnirange station, and on the west by a line 5 miles west of and parallel to the Green Bay omnirange 207° True radial.

9. Section 601.1983 *Three-mile radius zone* is amended by deleting the following airport:

Palacios, Tex.: Palacios Airport.

10. Section 601.1984 *Five-mile radius zones* is amended by deleting the following airports:

Gage, Okla.: Gage Airport.

Alexandria, La.: Municipal Airport.

Lake Charles, La.: Lake Charles AAF.

Beaumont, Tex.: Jefferson County Airport.

Alice, Tex.: Alice Airport.

11. Section 601.2023 is amended to read:

§ 601.2023 *Albuquerque, N. Mex., control zone.* Within a 5-mile radius of Kirtland AFB, within 2 miles either side

of the south course of the Albuquerque radio range extending to the Peralta fan marker, within 2 miles either side of a line bearing 352°-172° True through the Alameda nondirectional radio beacon extending from the 5-mile radius control zone boundary to a point 10 miles north of the Alameda nondirectional radio beacon and within 2 miles either side of the 91° and 271° True radials of the Albuquerque omnirange extending from the 5-mile radius control zone boundary to a point 10 miles west of the omnirange station.

12. Section 601.2026 is amended to read:

§ 601.2026 *Brownsville, Tex., control zone.* That airspace over United States territory, within a 5-mile radius of Rio Grande Valley International Airport, Brownsville, Tex., within 2 miles either side of the northwest course of the Brownsville radio range extending from the radio range station to the Los Fresnos fan marker and within 2 miles either side of the 72° True radial of the Brownsville omnirange extending from the omnirange station to a point 10 miles north-east.

13. Section 601.2032 is amended to read:

§ 601.2032 *Laredo, Tex., control zone.* That airspace over United States territory within a 10-mile radius of Laredo AFB and within 2 miles either side of the 147° True radial of the Laredo omnirange extending from the omnirange station to a point 10 miles southeast.

14. Section 601.2035 *New Orleans, La., control zone* is amended by adding the following portion to present control zone: "and within 2 miles either side of the 221° True radial of the New Orleans omnirange extending from the omnirange station to a point 10 miles south-west."

15. Section 601.2037 is amended to read:

§ 601.2037 *San Angelo, Tex., control zone.* Within a 10-mile radius of Mathis Field, within 2 miles either side of the northeast course of the San Angelo radio range extending to a point 10 miles northeast of the radio range station, and within 2 miles either side of the 72° True radial of the San Angelo omnirange extending to a point 10 miles northeast of the omnirange station.

16. Section 601.2220 is amended to read:

§ 601.2220 *Lubbock, Tex., control zone.* Within a 5-mile radius of Lubbock Municipal Airport, within a 5-mile radius of Reese AFB, within 2 miles either side of the east course of the Lubbock radio range extending from Lubbock Municipal Airport to the radio range station and within 2 miles either side of the north course of the radio range extending from the radio range station to the Roundup fan marker, within 2 miles either side of the 302° True and 122° True radials of the Lubbock omnirange extending from the Lubbock airport control zone to a point

10 miles northwest of the omnirange station and within 2 miles either side of a 180° True Track from the Lubbock ILS outer marker compass locator extending from the outer marker compass locator to the airport control zone boundary.

17. Section 601.2222 is amended to read:

§ 601.2222 *Austin, Tex., control zone.* Within a 10-mile radius of Robert Mueller Airport including a 5-mile radius of Bergstrom AFB and within 2 miles either side of the 04° True radial of the Austin omnirange extending from the omnirange station to a point 10 miles north.

18. Section 601.2249 *Corpus Christi, Tex., control zone* is amended by adding the following portion to present control zone: "and within 2 miles either side of the 178°-358° True radials of the Corpus Christi omnirange extending from the Cliff Maus Airport control zone to a point 10 miles north of the omnirange station."

19. Section 601.2263 is amended to read:

§ 601.2263 *Lafayette, La., control zone.* Within a 5-mile radius of Lafayette Airport, within 2 miles either side of the 172° True radial of the Lafayette omnirange extending from the omnirange station to a point 10 miles south, and within 2 miles either side of a line bearing 187° True from the Lafayette non-directional radio beacon extending from the non-directional radio beacon to a point 10 miles south.

20. Section 601.2280 is amended to read:

§ 601.2280 *Hobbs, N. Mex., control zone.* Within a 15-mile radius of Lea County, Airport, Hobbs, N. Mex., within 2 miles either side of the north course of the Hobbs radio range extending to a point 10 miles north of the radio range station and within 2 miles either side of the 45° True radial of the Hobbs omnirange extending to a point 10 miles northeast of the omnirange station.

21. Section 601.2314 is amended to read:

§ 601.2314 *Bryan, Tex., control zone.* Within a 5-mile radius of Bryan AFB including a 3 miles radius of Easterwood Airport, College Station, Tex., within 2 miles either side of the northwest course of the Bryan radio range extending from the radio range station to a point 10 miles northwest, and within 2 miles either side of the 107°-287° True radials of the College Station omnirange extending from the Easterwood Airport control zone to a point 10 miles northwest of the omnirange station.

22. Section 601.2326 is amended to read:

§ 601.2326 *Martha's Vineyard, Mass., control zone.* Within a 3-mile radius of Martha's Vineyard Airport and within 2 miles either side of a line bearing 180° True from the Martha's Vineyard Airport extending from the airport to a point 10 miles south.

23. Section 601.2327 is amended to read:

§ 601.2327 *Baton Rouge, La., control zone.* Within a 5-mile radius of Harding Field, with a 3-mile radius of East Baton Rouge Parish Airport, within 2 miles either side of the northwest course of the Baton Rouge radio range extending from the radio range station to a point 10 miles northwest, within 2 miles either side of a 314°-134° True track through the Baton Rouge ILS outer marker compass locator extending from the Harding Field control zone to a point 10 miles northwest of the outer marker compass locator, and within 2 miles either side of the 72°-252° True radials of the Baton Rouge omnirange extending from the Harding Field control zone to a point 10 miles southwest of the omnirange station.

24. Section 601.2329 is added to read:

§ 601.2329 *Gage, Okla., control zone.* Within a 5-mile radius of Gage Airport and within 2 miles either side of the 299°-119° True radials of the Gage omnirange extending from the airport control zone to a point 10 miles northwest of the omnirange station.

25. Section 601.2330 is added to read:

§ 601.2330 *Alexandria, La., control zone.* Within a 5-mile radius of Alexandria AFB, within 2 miles either side of the northwest and southeast courses of the Alexandria radio range extending from the AFB control zone to a point 10 miles southeast of the radio range station, and within 2 miles either side of the 156°-336° True radials of the Alexandria omnirange extending from the AFB control zone to a point 10 miles southeast of the omnirange station.

26. Section 601.2331 is added to read:

§ 601.2331 *Lake Charles, La., control zone.* Within a 5-mile radius of the Lake Charles AFB, within 2 miles either side of the south course of the Lake Charles radio range extending from the range station to a point 10 miles south, within 2 miles either side of the 232°-52° True radials of the Lake Charles omnirange extending from the Air Force Base control zone to a point 10 miles southwest of the omnirange station, and within 2 miles either side of a 155°-335° True track through the Lake Charles ILS outer marker compass locator extending from the Air Force Base control zone to a point 10 miles northwest of the outer marker compass locator.

27. Section 601.2332 is added to read:

§ 601.2332 *Beaumont, Tex., control zone.* Within a 5-mile radius of Jefferson County Airport, Beaumont, Tex., within 2 miles either side of the north course of the Beaumont radio range extending from the radio range station to a point 10 miles north, and within 2 miles either side of the 248°-68° True radials of the Beaumont omnirange extending from the airport control zone to a point 10 miles southwest of the omnirange station.

28. Section 601.2333 is added to read:

§ 601.2333 *Palacios, Tex., control zone.* Within a 3-mile radius of Palacios

Airport and within 2 miles either side of the 305°-125° True radials of the Palacios omnirange extending from the airport control zone to a point 10 miles northwest of the omnirange station.

29. Section 601.2334 is added to read:

§ 601.2334 *Alice, Tex., control zone.* Within a 5-mile radius of Alice Airport and within 2 miles either side of the west course of the Alice radio range extending from the radio range station to a point 10 miles west.

30. Section 601.2335 is added to read:

§ 601.2335 *Eau Claire, Wis., control zone.* Within a 5-mile radius of the Eau Claire, Wis., Airport and within 2 miles either side of the 04° True radial of the Eau Claire omnirange extending from the omnirange station to a point 10 miles north.

31. Section 601.2336 is added to read:

§ 601.2336 *Green Bay, Wis., control zone.* Within a 5-mile radius of the Austin-Straubel Airport, Green Bay, Wis., and within 2 miles either side of the 322° True radial of the Green Bay omnirange extending from the airport control zone to a point 10 miles northwest of the omnirange station.

32. Section 601.2337 is added to read:

§ 601.2337 *Wausau, Wis., control zone.* Within a 5-mile radius of Alexander Airport, Wausau, Wis., and within 2 miles either side of the 166°-346° True radials of the Wausau omnirange extending from the airport control zone to a point 10 miles southeast of the omnirange station.

33. Section 601.4246 is amended by changing the caption to read: "Red civil airway No. 46 (United States-Canadian Border to Rochester, Minn.)."

34. Section 601.4281 is amended to read:

§ 601.4281 *Red civil airway No. 81 (Cadillac, Mich., to Elkins, W. Va.).* The intersection of the southeast course of the Lansing, Mich., radio range and the west course of the Salem, Mich., VHF VAR radio range.

35. Section 601.4638 *Blue civil airway No. 38 (Annette Island, Alaska, to United States-Canadian Border)* is amended by deleting the compulsory reporting point which reads: "the intersection of the northwest course of the Petersburg, Alaska, radio range and the northeast course of the Sitka (Biorca Island), Alaska, radio range;" and by adding the following reporting point in lieu thereof: "the intersection of the southeast course of the Gustavus, Alaska, radio range and the northeast course of the Sitka, Alaska, radio range;"

36. Section 601.4645 is added to read:

§ 601.4645 *Blue civil airway No. 45 (Greenfield, Mass., to Lebanon, N. H.).* No reporting point designation.

37. Section 601.6007 is amended to read:

§ 601.6007 *VOR civil airway No. 7 control areas (Miami, Fla., to Green Bay, Wis.).* All of VOR civil airway No. 7 including east and west alternates.

38. Section 601.6026 is amended to read:

§ 601.6026 *VOR civil airway No. 26 control areas (Rapid City, S. Dak., to Muskegon, Mich.).* All of VOR civil airway No. 26 including north and south alternates.

39. Section 601.6098 *VOR civil airway No. 98 control areas (San Francisco, Calif., to Bakersfield, Calif.)* is revoked.

40. Section 601.6107 is amended to read:

§ 601.6107 *VOR civil airway No. 107 control areas (Santa Barbara, Calif., to San Francisco, Calif.).* All of VOR civil airway No. 107.

41. Section 601.6129 is added to read:

§ 601.6129 *VOR civil airway No. 129 control areas (La Crosse, Wis., to Eau Claire, Wis.).* All of VOR civil airway No. 129.

42. Section 601.7001 *Domestic VOR reporting points* is amended by adding the following reporting points:

Eau Claire, Wis., omnirange station.
Green Bay, Wis., omnirange station.
Wausau, Wis., omnirange station.

(Sec. 205, 52 Stat. 984, as amended; 49 U. S. C. 425. Interpret or apply sec. 601, 52 Stat. 1007, as amended; 49 U. S. C. 551)

This amendment shall become effective 0001, e. s. t., June 9, 1953.

[SEAL] F. B. LEE,
Administrator of Civil Aeronautics.

[F. R. Doc. 53-5149; Filed, June 10, 1953; 8:45 a. m.]

[Amdt. 56]

PART 608—DANGER AREAS ALTERATIONS

The danger area alterations appearing hereinafter have been coordinated with the civil operators involved, the Army, the Navy, and the Air Force, through the Air Coordinating Committee, Airspace Subcommittee, and are adopted when indicated in order to promote safety of the flying public. Since a military function of the United States is involved, compliance with the notice, procedures, and effective date provisions of section 4 of the Administrative Procedure Act is not required.

Part 608 is amended as follows:

1. In § 608.14, the Hunter-Liggett, California, area (D-285), published on January 19, 1951, in 16 F. R. 496, is amended by changing the "Designated Altitudes" column to read: "Surface to 14,000 feet MSL".

2. In § 608.29, the Long Pond, Massachusetts, area (D-97), published on July 16, 1949, in 14 F. R. 4292, and amended on January 16, 1953, in 18 F. R. 350, is deleted.

3. In § 608.43, the Lacarne (Lake Erie), Ohio, area (D-149), published on July 16, 1949, in 14 F. R. 4295, and amended on November 21, 1952, in 17 F. R. 10618, is further amended by changing the "Designated Altitudes" column to read: "Surface to unlimited", and by changing

the "Time of Designation" column to read: "Continuous".

4. In § 608.47, the Jamestown, Rhode Island, area (D-15), published on July 16, 1949, in 14 F. R. 4295, and amended on January 16, 1953, in 18 F. R. 350, is deleted.

(Sec. 205, 52 Stat. 984, as amended; 49 U. S. C. 425. Interpret or apply sec. 601, 52 Stat. 1007, as amended; 49 U. S. C. 551)

This amendment shall become effective on June 5, 1953.

[SEAL]

F. B. LEE,

Administrator of Civil Aeronautics.

[F. R. Doc. 53-5150; Filed, June 10, 1953; 8:45 a. m.]

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

PART 141—TESTS AND METHODS OF ASSAY FOR ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

PART 146—CERTIFICATION OF BATCHES OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

MISCELLANEOUS AMENDMENTS

By virtue of the authority vested in the Secretary by the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 52 Stat. 1040, 1055, as amended by 59 Stat. 463, 61 Stat. 11, 63 Stat. 409; 21 U. S. C. 357; 61 Stat. 18), the regulations for tests and methods of assay for antibiotic and antibiotic-containing drugs (21 CFR, 1952 Supp., Part 141) and certification of batches of antibiotic and antibiotic-containing drugs (21 CFR, 1952 Supp., Part 146; 18 F. R. 2099) are amended as set forth below:

1. In § 141.101 *Streptomycin sulfate* * * *, paragraph (b) is amended to read:

(b) *Culture media.* Using ingredients that conform to the standards prescribed by the U. S. P. or N. F., make nutrient agar for the seed and base layers:

Beef extract.....	1.5 gm.
Yeast extract.....	3.0 gm.
Peptone.....	6.0 gm.
Agar.....	15.0 gm.
Distilled water q. s.....	1,000.0 ml.

pH 7.8 to 8.0 after sterilization.

2. Section 141.302 is amended to read as follows:

§ 141.302 *Chloramphenicol capsules; potency—(a) Bioassay method.* Proceed as directed in § 141.301 (a), except subparagraphs (8) and (9) of that paragraph, and in lieu of the directions in subparagraph (4) prepare the sample as follows: Place the contents of not less than 10 capsules and the empty capsules in 100 milliliters of ethyl alcohol, and using a high-speed blender, blend for approximately 2 minutes. To the blender, add 400 milliliters of 1.0-percent phosphate buffer, pH 6.0, and blend for approximately 2 minutes. Withdraw a 1.0-milliliter aliquot and make the proper estimated dilutions in 1.0-percent phosphate buffer, pH 6.0.

(b) *Spectrophotometric assay method.* Place the contents of 10 capsules in a 250-milliliter volumetric flask. Add 50 milliliters of redistilled methanol to the flask and shake for at least 1 minute. Make to volume with distilled water and mix thoroughly. Withdraw an aliquot and dilute with sufficient distilled water to give a concentration of 20 micrograms per milliliter. With a suitable spectrophotometer, determine the optical density of this solution and a 1-centimeter cell at 278 m μ compared with distilled water as a blank.

Potency per capsule = $\frac{\text{optical density}}{0.596}$

X labeled potency per capsule

(c) *Chloramphenicol content.* When assayed by either of these methods, its potency is satisfactory if it contains not less than 85 percent of the number of milligrams of chloramphenicol per capsule that it is represented to contain.

3. Part 141 is amended by adding the following new section:

§ 141.309 *Chloramphenicol-streptomycin capsules; chloramphenicol-dihydrostreptomycin capsules—(a) Potency—(1) Content of chloramphenicol.* Proceed as directed in § 141.302 (a) or (b). Its content of chloramphenicol is satisfactory if it contains not less than 85 percent of the number of milligrams per capsule that it is represented to contain.

(2) *Content of streptomycin.* Using 10 capsules, proceed as directed in § 141.101, except paragraphs (j) and (k) of that section. Its content of streptomycin is satisfactory if it contains not less than 85 percent of the number of milligrams per capsule that it is represented to contain.

(3) *Content of dihydrostreptomycin.* Proceed as directed in subparagraph (2) of this paragraph, using the dihydrostreptomycin working standard as a standard of comparison. Its content of dihydrostreptomycin is satisfactory if it contains not less than 85 percent of the number of milligrams per capsule that it is represented to contain.

(b) *Moisture.* Proceed as directed in § 141.5 (a).

(Sec. 701, 52 Stat. 1055; 21 U. S. C. 371. Interpret or applies sec. 507, 59 Stat. 463, as amended; 21 U. S. C. 357)

4. In § 146.117 *Dihydrostreptomycin-streptomycin sulfates solution*, subparagraph (3) of paragraph (a) *Standards of identity* * * * is amended by changing the figures "5.7" and "6.3" to read "5.0" and "7.5", respectively.

5. Part 146 is amended by adding the following new section:

§ 146.309 *Chloramphenicol-streptomycin capsules; chloramphenicol-dihydrostreptomycin capsules.* (a) Chloramphenicol-streptomycin capsules and chloramphenicol-dihydrostreptomycin capsules conform to all requirements prescribed by § 146.302 for chloramphenicol capsules, and are subject to all procedures prescribed by § 146.302 for chloramphenicol capsules, except that:

(1) Each capsule contains not less than 125 milligrams of chloramphenicol.

(2) Each capsule contains not less than 125 milligrams of streptomycin or dihydrostreptomycin. The streptomycin used conforms to the standard prescribed therefor by § 146.101 (a), except subparagraphs (2) and (4) of that paragraph. The dihydrostreptomycin used conforms to the standards prescribed therefor by § 146.103, except the standards for sterility and pyrogens.

(3) Its moisture content is not more than 5 percent.

(4) In lieu of the labeling prescribed for chloramphenicol capsules by § 146.302 (c) (1) (ii) and (iii), each package shall bear on the outside wrapper or container and the immediate container the number of milligrams of chloramphenicol and the number of milligrams of streptomycin or dihydrostreptomycin in each capsule of the batch and the statement "Expiration date -----," the blank being filled in with the date which is 18 months after the month during which the batch was certified.

(5) In addition to complying with the requirements of § 146.302 (d), a person who requests certification of a batch shall submit with his request a statement showing the batch mark and (unless it was previously submitted) the results and the date of the latest tests and assays of the streptomycin or dihydrostreptomycin used in making the batch for potency, toxicity, histamine content, moisture, pH, streptomycin content if it is dihydrostreptomycin, and crystallinity if it is crystalline dihydrostreptomycin sulfate. He shall also submit in connection with his request a sample consisting of not less than 30 capsules of such batch and (unless it was previously submitted) a sample consisting of 5 packages each containing approximately equal portions of not less than 500 milligrams of the streptomycin or dihydrostreptomycin used in making the batch, packaged in accordance with the requirements of § 146.101 (b).

(b) The fee for the services rendered with respect to each immediate container in the sample of streptomycin or dihydrostreptomycin submitted in accordance with the requirements prescribed therefor by this section shall be \$10.00.

(Sec. 701, 52 Stat. 1055; 21 U. S. C. 371. Interpret or applies sec. 507, 59 Stat. 463, as amended; 21 U. S. C. 357)

This order, which provides for a change in the formula for the nutrient agar used in the assay of streptomycin; for a change in the standard for the pH of dihydrostreptomycin-streptomycin sulfates solution from a minimum of 5.7 and a maximum of 6.3 to 5.0 and 7.5, respectively; for an improved method of assay for chloramphenicol capsules; and for tests and methods of assay and certification of two new antibiotic preparations, chloramphenicol-streptomycin capsules and chloramphenicol-dihydrostreptomycin capsules, shall become effective upon publication in the FEDERAL REGISTER, since both the public and the affected industry will benefit by the earliest effective date, and I so find.

Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since it was drawn in collaboration with inter-

ested members of the affected industry and since it would be against public interest to delay providing for the amendments set forth above.

Dated: June 4, 1953.

[SEAL] OVETA CULP HOBBY,
Secretary.

[F. R. Doc. 53-5173; Filed, June 10, 1953;
8:51 a. m.]

**PART 141—TESTS AND METHODS OF ASSAY
FOR ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS**

**PART 146—CERTIFICATION OF BATCHES OF
ANTIBIOTIC AND ANTIBIOTIC-CONTAINING
DRUGS**

**STREPTOMYCIN (OR DIHYDROSTREPTOMYCIN) -
PENICILLIN - SULFONAMIDE WITH
KAOLIN AND PECTIN**

By virtue of the authority vested in the Secretary by the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 52 Stat. 1040, 1055, as amended by 59 Stat. 463, 61 Stat. 11, 63 Stat. 409; 21 U. S. C. 357; 61 Stat. 18), the regulations for tests and methods of assay for antibiotic and antibiotic-containing drugs (21 CFR, 1952 Supp., Part 141) and certification of batches of antibiotic and antibiotic-containing drugs (21 CFR, 1952 Supp., Part 146) are amended as set forth below:

1. Part 141 is amended by adding the following new section:

§ 141.123 *Streptomycin - penicillin-sulfonamide with kaolin and pectin; dihydrostreptomycin-penicillin-sulfonamide with kaolin and pectin*—(a) *Potency*—(1) *Streptomycin content*. Proceed as directed in § 141.101. Its potency is satisfactory if it contains not less than 90 percent of the number of milligrams of streptomycin it is represented to contain.

(2) *Dihydrostreptomycin content*. Proceed as directed in subparagraph (1) of this paragraph, using the dihydrostreptomycin working standard as a standard of comparison. Its potency is satisfactory if it contains not less than 90 percent of the number of milligrams of dihydrostreptomycin it is represented to contain.

(3) *Penicillin content*. Proceed as directed in § 141.1. Its potency is satisfactory if it contains not less than 90 percent of the number of units of penicillin it is represented to contain.

(b) *Moisture content*. Proceed as directed in § 141.5 (a).

(c) *pH*. Prepare the suspension as directed in the labeling of the drug and proceed as directed in § 141.5 (b).

(Sec. 307, 52 Stat. 1055; 21 U. S. C. 271. Interprets or applies sec. 507, 59 Stat. 463, as amended; 21 U. S. C. 357.)

2. Part 146 is amended by adding the following new section:

§ 146.118 *Streptomycin-penicillin-sulfonamide with kaolin and pectin; dihydrostreptomycin-penicillin-sulfonamide with kaolin and pectin*—(a) *Standards of identity, strength, quality, and purity*. Streptomycin-penicillin-sulfonamide with kaolin and pectin and dihydro-

drostreptomycin-penicillin-sulfonamide with kaolin and pectin are dry mixtures of streptomycin sulfate or dihydrostreptomycin sulfate, crystalline penicillin G (sodium or potassium), one or more suitable sulfonamides, kaolin, and pectin, with or without bismuth subcarbonate and with or without one or more suitable and harmless preservatives, colorings, and flavorings. Its moisture content is not more than 2 percent. The pH of a suspension prepared as directed in its labeling is not less than 5.5 and not more than 7.5. The streptomycin used therefor by § 146.101 (a), except subparagraphs (2) and (4) of that paragraph. The dihydrostreptomycin used conforms to the standards prescribed therefor by § 146.103, except the standards for sterility and pyrogens. The crystalline penicillin G used conforms to the standards prescribed therefor by § 146.24 (a), except subparagraphs (2) and (4) of that paragraph. Each other substance used, if its name is recognized in the U. S. P. or N. F., conforms to the standards prescribed therefor by such official compendium.

(b) *Packaging*. In all cases the immediate container shall be a tight container as defined by the U. S. P. and shall contain not less than 1.0 gram of streptomycin or dihydrostreptomycin and not less than 1,200,000 units of penicillin. The composition of the immediate container shall be such as will not cause any change in the strength, quality, or purity of the contents beyond any limit therefor in applicable standards, except that minor changes so caused which are normal and unavoidable in good packaging, storage, and distribution practice shall be disregarded.

(c) *Labeling*. Each package shall bear, on its label or labeling as herein-after indicated, the following:

(1) On the outside wrapper or container and the immediate container:

(i) The batch mark.

(ii) The number of grams of streptomycin or dihydrostreptomycin and the number of units of penicillin in the immediate container.

(iii) The name and quantity of each sulfonamide in the immediate container.

(iv) The quantity of kaolin and pectin in the immediate container.

(v) If the batch contains bismuth subcarbonate or preservatives, the name and quantity of each such substance in the immediate container.

(vi) The statement "Expiration date _____," the blank being filled in with the date which is 24 months after the month during which the batch was certified.

(vii) The statement "Warning—Not for injection."

(2) On the immediate container, directions for preparing the suspension and the statement "Suspension may be kept in refrigerator for 1 week without significant loss of potency."

(3) On the outside wrapper or container:

(i) The statement "Caution: Federal law prohibits dispensing without prescription," unless it is packaged for dispensing and it is intended solely for

veterinary use and is conspicuously so labeled.

(ii) If it is packaged for dispensing and it is intended for use by man, a reference specifically identifying a readily available medical publication containing information (including contraindications and possible sensitization) adequate for the use of such drug by practitioners licensed by law to administer it; or a reference to a brochure or other printed matter containing such information, and a statement that such brochure or other printed matter will be sent on request: *Provided, however*, That this reference may be omitted if the information is contained in a circular or other labeling within or attached to the package.

(4) On the circular or other labeling within or attached to the package, if it is packaged for dispensing and it is intended solely for veterinary use and is conspicuously so labeled, adequate directions and warnings for the veterinary use of such drug by the laity. Such circular or other labeling may also bear a statement that a brochure or other printed matter containing information for other veterinary uses of such drug by a veterinarian licensed by law to administer it will be sent to such veterinarian on request.

(d) *Request for certification; samples*.

(1) In addition to complying with the requirements of § 146.2, a person who requests certification of a batch shall submit with his request a statement showing the batch mark, the number of packages of each size in such batch, the batch marks and (unless they were previously submitted) the dates on which the latest assays of the streptomycin or dihydrostreptomycin and penicillin used in making such batch were completed, the number of grams of streptomycin or dihydrostreptomycin and the number of units of penicillin in the immediate container, the quantity of each ingredient used in making the batch, the date on which the latest assay of the drug comprising such batch was completed, and a statement that each ingredient used in making the batch conforms to the requirements prescribed therefor by this section.

(2) Except as otherwise provided in subparagraph (4) of this paragraph, such person shall submit in connection with his request results of the tests and assays listed after each of the following, made by him on an accurately representative sample of:

(i) The batch; content of streptomycin or dihydrostreptomycin, content of penicillin, moisture, and pH.

(ii) The streptomycin or dihydrostreptomycin used in making the batch; potency, toxicity, histamine content, moisture, pH, streptomycin content if it is dihydrostreptomycin, and crystallinity if it is crystalline dihydrostreptomycin.

(iii) The penicillin used in making the batch; potency, toxicity, moisture, pH, crystallinity, heat stability, and penicillin G content.

(3) Except as otherwise provided by subparagraph (4) of this paragraph, such person shall submit in connection

with his request, in the quantities hereinafter indicated, accurately representative samples of the following:

(i) The batch; one immediate container for each 5,000 immediate containers in the batch, but in no case less than 6 or more than 12 immediate containers, collected by taking single immediate containers at such intervals throughout the entire time the containers are being filled that the quantities packaged during the intervals are approximately equal.

(ii) The streptomycin or dihydrostreptomycin used in making the batch; 5 packages, containing approximately equal portions of not less than 0.5 gram each, packaged in accordance with the requirements of § 146.101 (b).

(iii) The penicillin used in making the batch; 10 packages, containing approximately equal portions of not less than 60 milligrams each, packaged in accordance with the requirements of § 146.24 (b).

(iv) In case of an initial request for certification, each other ingredient used in making the batch; one package of each, containing approximately 5.0 grams.

(4) No result referred to in subparagraph (2) (ii) and (iii) of this paragraph, and no sample referred to in subparagraph (3) (ii) and (iii) of this paragraph, is required if such result or sample has been previously submitted.

(e) *Fees.* The fee for the services rendered with respect to each batch under the regulations in this part shall be:

(1) \$4.00 for each immediate container in the samples submitted in accordance with paragraph (d) (3) (i), (iii), and (iv) of this section; \$10.00 for each package in the sample submitted in accordance with paragraph (d) (3) (ii) of this section.

(2) If the Commissioner considers that investigations other than examination of such immediate containers are necessary to determine whether or not such batch complies with the requirements of § 146.3 for the issuance of a certificate, the cost of such investigations.

The fee prescribed by subparagraph (1) of this paragraph shall accompany the request for certification, unless such fee is covered by an advance deposit maintained in accordance with § 146.8 (d).

(Sec. 307, 52 Stat. 1055; 21 U. S. C. 371. Interprets or applies sec. 507, 59 Stat. 463, as amended; 21 U. S. C. 357)

This order, which provides for tests and methods of assay and certification of two new antibiotic preparations, streptomycin - penicillin - sulfonamide with kaolin and pectin and dihydrostreptomycin - penicillin - sulfonamide with kaolin and pectin, shall become effective upon publication in the FEDERAL REGISTER, since both the public and the affected industry will benefit by the earliest date, and I so find.

Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since it was drawn in collaboration with interested members of the affected industry and since it would be against public in-

terest to delay providing for the above amendments.

Dated: June 4, 1953.

[SEAL] OVETA CULP HOBBY,
Secretary.

[F. R. Doc. 53-5174; Filed, June 10, 1953;
8:51 a. m.]

TITLE 32A—NATIONAL DEFENSE, APPENDIX

Chapter I—Office of Defense Mobilization

[Defense Mobilization Order 20, Amended]

DMO 20—ESTABLISHING REVISED PROCEDURES FOR THE DESIGNATION AND CERTIFICATION OF CRITICAL DEFENSE HOUSING AREAS

Pursuant to the authority vested in me by Executive Order No. 10456 of May 27, 1953, Executive Order No. 10296 of October 2, 1951, and pursuant to the Housing and Rent Act of 1953, it is hereby ordered as follows:

A. *Establishment of Defense Areas Advisory Committee.* In accordance with the Housing and Rent Act of 1953, there is hereby created in the Office of Defense Mobilization a Defense Areas Advisory Committee which shall consist of representatives of the Department of Defense and the Housing and Home Finance Agency, and a Chairman designated by the Director, Office of Defense Mobilization.

It shall be the responsibility of the Defense Areas Advisory Committee to review particular areas pursuant to the Housing and Rent Act of 1953, and the Defense Housing and Community Facilities and Services Act of 1951, as amended, and make recommendations to the Director of Defense Mobilization for certification as critical defense housing areas. The Committee shall also review all areas certified prior to April 30, 1953, in light of the new criteria applicable to such areas as contained in Housing and Rent Act of 1953 and shall make recommendations as to which areas meet the new criteria. The Committee shall also conduct a continuous review of certified areas to determine whether any of these should be decertified and make recommendations accordingly.

Any Federal agency shall, to the fullest practicable extent, furnish such information in its possession to the Defense Areas Advisory Committee as such Committee may request from time to time relevant to its operations.

B. *Procedure for recommendations under Defense Housing and Community Facilities and Services Act of 1951 (Pub. Law 139).* It shall be the responsibility of the Administrator of the Housing and Home Finance Agency to make recommendations to the Defense Areas Advisory Committee for the designation of critical defense housing areas under the provisions of section 101 of the Defense Housing and Community Facilities and Services Act of 1951, as amended. In carrying out this responsibility the Administrator of the Housing and Home Finance Agency, for each area under consideration, shall:

(1) Secure from the appropriate defense agencies information and recommendations necessary to determine whether the area does or does not contain defense-connected activities.

(2) Secure from the Bureau of Employment Security of the Department of Labor, or from the Department of Defense, or both, information and judgments necessary to a determination on in-migration of defense workers or military personnel.

(3) Make the necessary studies of the present and prospective housing supply in the area.

(4) Assemble and analyze the information provided by the several agencies and determine, in the light of all the facts and their interrelations, whether or not the conditions contained in section 101 for designation of a critical defense housing area have been met.

(5) Prepare a written summary of findings, including a description of the area to be affected, for each case recommended.

It shall be the responsibility of the Office of Defense Mobilization, the National Production Authority, the Defense Minerals Exploration Administration, the Department of Defense and other defense agencies to provide the Administrator of the Housing and Home Finance Agency, upon his request, with information and recommendations regarding the defense connection of installations or activities in the area under consideration.

It shall be the responsibility of the Bureau of Employment Security of the Department of Labor to provide the Administrator of the Housing and Home Finance Agency, upon his request, with information and judgments regarding the in-migration of industrial defense workers for each area under consideration.

It shall be the responsibility of the Department of Defense to provide the Administrator of the Housing and Home Finance Agency, upon his request, with information and judgments regarding the in-migration of military personnel for each area under consideration. The Department of Defense shall also provide the Administrator of the Housing and Home Finance Agency with such information as it possesses concerning housing conditions in and around military posts or installations.

It shall be the responsibility of the Department of Health, Education and Welfare to make surveys of and to provide the Housing and Home Finance Agency with information and judgments regarding the need for community facilities under its jurisdiction in connection with areas under consideration and to initiate consideration of areas where a shortage of community facilities is the principal problem.

C. *Procedure for recommendations of military areas under the Housing and Rent Act of 1953 (Pub. Law 23, 83d Cong.)* It shall be the responsibility of the Armed Forces Housing Agency of the Department of Defense to make recommendations to the Defense Areas Advisory Committee for certification or decertification (pursuant to section 204 (1) of the Housing and Rent Act of 1947, as

amended) and review prior to July 31, 1953 (pursuant to section 5 of the Housing and Rent Act of 1953), of critical defense housing areas where the predominant defense activity in the area is not a plant or installation of the Atomic Energy Commission.

In carrying out this responsibility, the Armed Forces Housing Agency shall:

(1) Secure from the military departments information and judgments with respect to Department of Defense plants or installations, in-migration, housing and rent problems experienced by military and civilian employees in and around these plants or installations in areas under consideration;

(2) Secure from the Housing and Home Finance Agency information and judgments on housing shortages in areas under consideration;

(3) Secure from the Office of Rent Stabilization such studies on rent levels as are necessary to determine whether excessive rent increases have resulted or threaten to result in the areas under consideration;

(4) Secure from the Bureau of Employment Security of the Department of Labor information on in-migration of civilian workers, or other information, necessary in the evaluation of the area under consideration;

(5) Organize and analyze the information and judgments in light of the information assembled and prepare a written summary of finding, including a description of the area affected, for each case considered by the Committee.

D. *Procedure for recommendations of Atomic Energy Commission areas under the Housing and Rent Act of 1953* (Pub. Law 23, 83d Cong.). It shall be the responsibility of the staff of the Defense Areas Advisory Committee to collect, organize and analyze the information and judgments provided by appropriate defense agencies to allow the Committee to make recommendations regarding the certification or decertification (pursuant to section 204 (1) of the Housing and Rent Act of 1947, as amended) and review prior to July 31, 1953 (pursuant to section 5 of the Housing and Rent Act of 1953) of critical defense housing areas where an atomic energy plant or installation is the predominant defense activity in the area.

In carrying out this responsibility, the Committee staff shall:

(1) Secure from the Atomic Energy Commission such information as this agency may have regarding housing and rent problems experienced by civilian employees in and around AEC plants and

installations in the area under consideration;

(2) Secure from the Housing and Home Finance Agency information and judgments on housing shortages in areas under consideration;

(3) Secure from the Office of Rent Stabilization such studies on rent levels as are necessary to determine whether excessive rent increases have resulted or are threatening to result in the areas under consideration;

(4) Secure from the Bureau of Employment Security of the Department of Labor information on in-migration of civilian workers, or other information, necessary in the evaluation of the area under consideration.

This order shall take effect on June 10, 1953.

OFFICE OF DEFENSE MOBILIZATION,
ARTHUR S. FLEMMING,
Director.

With respect to the procedure established by this order under the Housing and Rent Act of 1953, the Secretary of Defense hereby concurs.

CHARLES E. WILSON,
Secretary of Defense.

[F. R. Doc. 53-5193; Filed, June 10, 1953;
8:55 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1848]

PART 250—PUBLIC LANDS

ACTION AT CLOSE OF BIDDING

Section 250.11 (b) (3) is amended to read as follows:

§ 250.11 *Action at close of bidding.*
* * *

(b) *Preference right of purchase; declaration of purchaser.* * * *

(3) Where there is a conflict between two or more persons claiming a preference right of purchase, they will be allowed 30 days from receipt of notice within which to agree among themselves upon a division of the tracts by subdivisions. In the absence of an agreement an equitable division of the land will be made taking into consideration such factors as (i) the equalizing of the number of acres which each claimant will be permitted to purchase, (ii) desirable land use, based on topography, land pattern, location of water, and similar factors, and (iii) legitimate historical use, in-

cluding construction and maintenance of authorized improvements. If equitable considerations dictate, all of the subdivisions may be awarded to one of the claimants. Where only one subdivision is offered for sale and it adjoins the lands of two or more preference right claimants, it will, in the absence of equitable considerations requiring otherwise, be awarded to the applicant for the sale if he is a qualified person who properly asserts such a preference right within or prior to the 30-day preference-right period. The manager will make the award by declaring the appropriate claimant or claimants purchasers of the land.

(R. S. 2478; 43 U. S. C. 1201)

DOUGLAS MCKAY,
Secretary of the Interior.

June 4, 1953.

[F. R. Doc. 53-5154; Filed, June 10, 1953;
8:46 a. m.]

TITLE 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health, Education, and Welfare

Subchapter A—General Provisions

PART 2—ACCEPTANCE AND ADMINISTRATION OF GIFTS

MISCELLANEOUS AMENDMENTS

Notice of proposed rule making, public rule making proceedings and postponement of effective date have been found to be unnecessary and have been omitted in the issuance of the following amendment to this part which relates solely to the internal management of the Public Health Service.

Part 2 of Subchapter A of this title is amended as follows:

1. Section 2.5, *Loans of property* is revoked.
2. Section 2.6 is amended to read as follows:

§ 2.6 *Property accounting.* Records of personal property accepted on behalf of the United States under §§ 2.2 and 2.3 shall be kept in accordance with instructions and policies of the Surgeon General.

(Sec. 215, 58 Stat. 690; 42 U. S. C. 216)

[SEAL] LEONARD A. SCHEELS,
Surgeon General.

Approved: June 4, 1953.

OVETA CULP HOBBY,
Secretary.

[F. R. Doc. 53-5172; Filed, June 10, 1953;
8:51 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 130]

FLATHEAD INDIAN IRRIGATION PROJECT,
MONTANA

OPERATION AND MAINTENANCE CHARGES

JUNE 5, 1953.

Pursuant to section 4 (a) of the Administrative Procedure Act of June 11, 1946 (Pub. Law 404, 79th Cong., 60 Stat. 238), and authority contained in the acts of Congress approved August 1, 1914; May 18, 1916; and March 7, 1928 (38 Stat. 583, 25 U. S. C. 385; 39 Stat. 142; and 45 Stat. 210, 25 U. S. C. 387), and by virtue of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs August 28, 1946, and by virtue of the authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs to the Regional Director September 14, 1946, which title was changed to Area Director September 13, 1949, by Order No. 2535, notice is hereby given of the intention to modify §§ 130.24, 130.26 and 130.28 of Title 25, Code of Federal Regulations, dealing with irrigable lands of the Flathead Indian Irrigation Project, Montana, that are subject to the jurisdiction of the several irrigation districts, as follows:

Charges applicable to all irrigable lands of the Flathead Indian Irrigation Project that are included in the Irrigation District Organization and are subject to the jurisdiction of the three irrigation districts.

§ 130.24 *Charges.* Pursuant to a contract executed by the Flathead Irrigation District, Flathead Indian Irrigation Project, Montana, on May 12, 1928, as supplemented and amended by later contracts dated February 27, 1929; March 28, 1934; August 26, 1936, and April 5, 1950, there is hereby fixed for the season of 1954, an assessment of \$200,000 for the operation and maintenance of the irrigation system which serves that portion of the project within the confines and under the jurisdiction of the Flathead Irrigation District. This assessment involves an area of approximately 68,392 acres; does not include any land held in trust for Indians and covers all proper general charges and project overhead.

§ 130.26 *Charges.* Pursuant to a contract executed by the Mission Irrigation District, Flathead Indian Irrigation Project, Montana, on March 7, 1931, approved by the Secretary of the Interior on April 21, 1931, as supplemented and amended by later contracts dated June 2, 1934, June 6, 1936 and May 16, 1951, there is hereby fixed, for the season of 1954, an assessment of \$37,300 for the operation and maintenance of the irrigation system which serves that portion of the project within the confines and under the jurisdiction of the Mission Irrigation District. This assessment in-

volves an area of approximately 13,210 acres; does not include any land held in trust for Indians and covers all proper general charges and project overhead.

§ 130.28 *Charges.* Pursuant to a contract executed by the Jocko Valley Irrigation District, Flathead Indian Irrigation Project, Montana, on November 13, 1934, approved by the Secretary of the Interior on February 26, 1935, as supplemented and amended by later contracts dated August 26, 1936 and April 18, 1950, there is hereby fixed, for the season of 1954, an assessment of \$14,400 for the operation and maintenance of the irrigation system which serves that portion of the project within the confines and under the jurisdiction of the Jocko Valley Irrigation District. This assessment involves an area of approximately 5,671 acres; does not include any lands held in trust for Indians and covers all proper general charges and project overhead.

Interested persons are hereby given opportunity to participate in preparing the proposed amendments by submitting their views, data or arguments in writing to Paul L. Fickinger, Area Director, Bureau of Indian Affairs, 804 North 29th Street, Billings, Montana, within 30 days from the date of publication of this notice of intention in the daily issue of the FEDERAL REGISTER.

PAUL L. FICKINGER,
Area Director.

[F. R. Doc. 53-5192; Filed, June 10, 1953;
8:55 a. m.]

DEPARTMENT OF AGRICULTURE

Production and Marketing
Administration

[7 CFR Part 27]

COTTON FIBER AND SPINNING TESTS
NOTICE OF PROPOSED RULE MAKING

Notice is hereby given in accordance with section 4 (a) of the Administration Procedure Act that the Secretary of Agriculture is considering an amendment to § 27.507 of the regulations governing cotton fiber and spinning tests (7 CFR 27.501-27.512), pursuant to the authority contained in the Cotton Quality and Statistics Act of March 3, 1927 as amended April 7, 1941 (55 Stat. 131; 7 U. S. C. 473d).

The proposed amendment would revise the schedule of tests in order to make provision of certain tests that have been recently developed. The proposed amendment is in addition to the fiber and spinning tests promulgated in the FEDERAL REGISTER on January 3, 1952 (17 F. R. 60).

All persons who desire to submit written data, views or arguments concerning the proposed amendment should do so by filing same, in duplicate, with the Director, Cotton Branch, Production and Marketing Administration, United States Department of Agriculture, Washington

25, D. C. not later than 10 days after publication hereof in the FEDERAL REGISTER.

The proposed amendment is as follows:

1. Paragraph (a) of § 27.507 *Prescribed fees*, would be changed to read:

§ 27.507 *Prescribed fees.* (a) Fees for fiber and spinning tests shall be assessed in accordance with items 1 to 37 inclusive, as listed:

2. The list of fees for fiber and spinning tests under § 27.507 (a) would be expanded to include:

Item No.	KIND OF TEST	Fee per test
33.	Determination of sugar content of ginned cotton lint by chemical-colorimetric test, 2 determinations on each sample, per sample.....	\$2.00
	5 or more samples submitted at same time, per sample.....	.75
34.	Furnishing set of color standards and master diagram for use in calibrating Nickerson-Hunter Cotton Colorimeter.....	25.00
35.	Furnishing diagram of color measurements on official grade standards purchased by applicant, per set or portion of set.....	15.00
36.	Color measurements on individual samples of cotton and reporting results in terms of reflectance (Rd) and degree of yellowness (b), per sample.....	.50
	5 or more samples submitted at same time, per sample.....	.25
37.	Fiber fineness and maturity of ginned cotton lint by the Caustic method, per sample.....	1.25
	Minimum fee.....	10.00

(55 Stat. 131; U. S. C. 473d)

Done at Washington, D. C., this 8th day of June 1953.

[SEAL] TRUE D. MORSE,
Acting Secretary of Agriculture.

[F. R. Doc. 53-5178; Filed, June 10, 1953;
8:53 a. m.]

[7 CFR Part 727]

[1026 (Maryland-53)-1]

MARYLAND TOBACCO

NOTICE OF FORMULATION OF REGULATIONS
RELATING TO MARKETING OF MARYLAND
TOBACCO, COLLECTION OF PENALTIES, AND
RECORDS AND REPORTS FOR THE 1953-54
MARKETING YEAR

Pursuant to the authority contained in the Agricultural Adjustment Act of 1938, as amended (7 U. S. C. 1301, 1311-1314, 1372-1375), the Secretary of Agriculture is preparing to formulate marketing quota regulations governing the issuance of marketing cards, the identification of tobacco, the collection and refund of penalties, and the records and reports incident thereto on the marketing of Maryland tobacco, Type 32, for the 1953-54 marketing year. The proposed regulations follow below:

GENERAL

Sec.
727.430 Basis and purpose.
727.431 Definitions.

- Sec.
727.432 Instructions and forms.
727.433 Extent of calculations and rule of fractions.

FARM MARKETING QUOTAS AND MARKETING CARDS

- 727.434 Amount of farm marketing quota.
727.435 Transfer of farm marketing quota.
727.436 Issuance of marketing cards.
727.437 Person authorized to issue cards.
727.438 Rights of producers in marketing cards.
727.439 Successors in interest.
727.440 Invalid cards.
727.441 Report of misuse of marketing cards.

MARKETING OR OTHER DISPOSITION OF TOBACCO AND PENALTIES

- 727.442 Extent to which marketings from a farm are subject to penalty.
727.443 Disposition of excess tobacco.
727.444 Identification of marketings.
727.445 Rate of penalty.
727.446 Persons to pay penalty.
727.447 Marketings deemed to be excess tobacco.
727.448 Payment of penalty.
727.449 Request for return of penalty.

RECORDS AND REPORTS

- 727.450 Producer's records and reports.
727.451 Warehouseman's records and reports.
727.452 Dealer's records and reports.
727.453 Dealers exempt from regular records and reports.
727.454 Records and reports of truckers and persons redrying, prizing or stemming tobacco.
727.455 Separate records and reports from persons engaged in more than one business.
727.456 Failure to keep records or make reports.
727.457 Examination of records and reports.
727.458 Length of time records and reports to be kept.
727.459 Information confidential.
727.460 Redelegation of authority.

AUTHORITY: §§ 727.430 to 727.460 issued under sec. 375, 52 Stat. 66; 7 U. S. C. 1375. Interpret or apply 52 Stat. 38, 47, 48, 65, 66, as amended; 7 U. S. C. 1301, 1313, 1314, 1372, 1373, 1374, 1375.

GENERAL

§ 727.430 *Basis and purpose.* Sections 727.430 to 727.460 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended, and govern the issuance of marketing cards, the identification of tobacco, the collection and refund of penalties, and the records and reports incident thereto on the marketing of Maryland tobacco during the 1953-54 marketing year.

§ 727.431 *Definitions.* As used in §§ 727.430 to 727.460, and in all instructions, forms, and documents in connection therewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the context or subject matter otherwise requires.

(a) "Act" means the Agricultural Adjustment Act of 1938, as amended.

(b) "Carry-over" tobacco means, with respect to a farm, tobacco produced prior to the beginning of the calendar year 1953, which has not been marketed or which has not been disposed of under § 727.443.

(c) Committees: (1) "Community committee" means the persons elected

within a community as the community committee pursuant to the regulations governing the selection and functions of Production and Marketing Administration county and community committees.

(2) "County committee" means the persons elected within a county as the county committee pursuant to regulations governing the selection and functions of Production and Marketing Administration county and community committees.

(3) "State committee" means the persons designated by the Secretary as the State committee of the Production and Marketing Administration.

(d) "County office manager" means the person employed by the county committee to execute the policies of the county committee and be responsible for the day-to-day operations of the county PMA office, or the person acting in such capacity.

(e) "Dealer" or "buyer" means a person who engages to any extent in the business of acquiring tobacco from producers without regard to whether such person is registered as a dealer with the Bureau of Internal Revenue or any other authority.

(f) "Director" means Director or Acting Director, Tobacco Branch, Production and Marketing Administration, United States Department of Agriculture.

(g) "Farm" means all adjacent or nearby farm land under the same ownership which is operated by one person, including also:

(1) Any other adjacent or nearby farm land which the county committee, in accordance with instructions issued by the Assistant Administrator for Production, Production and Marketing Administration, determines is operated by the same person as part of the same unit with respect to the rotation of crops and with workstock, farm machinery, and labor substantially separate from that for any other lands; and

(2) Any field-rented tract (whether operated by the same or another person) which, together with any other land included in the farm, constitutes a unit with respect to the rotation of crops.

A farm shall be regarded as located in the county in which the principal dwelling is situated, or if there is no dwelling thereon it shall be regarded as located in the county in which the major portion of the farm is located.

(h) "Field assistant" means any duly authorized employee of the United States Department of Agriculture, and any duly authorized employee of a county PMA office whose duties involve the preparation and handling of records and reports pertaining to tobacco marketing quotas. In a hoghead tobacco warehouse, a person officially authorized by an individual, association, or firm who engages in receiving tobacco from farmers and who assists in the sale of such tobacco through such warehouse to keep records and make reports for such individual, association, or firm with respect to sales of tobacco through the warehouse shall perform the functions hereinafter prescribed for field assistants.

(i) "Floor sweepings" means scraps, leaves, or bundles of tobacco, generally

of inferior quality, which accumulate on the warehouse floor and which not being subject to identification with any particular lot of tobacco are gathered up by the warehouseman for sale. Floor sweepings shall not include tobacco defined as "pick-ups."

(j) "Leaf account tobacco" means all tobacco purchased by or for a warehouseman and "leaf account" shall include the records required to be kept and copies of the reports required to be made under §§ 727.430 to 727.460 relating to tobacco purchased by or for a warehouseman and resales of such tobacco.

(k) "Market" means the disposition in raw or processed form of tobacco by voluntary or involuntary sale, barter, or exchange, or by gift inter vivos. "Marketing" and "marketed" shall have corresponding means to the term "market."

(l) "Nonwarehouse sale" means any first marketing of farm tobacco other than (1) by sale at public auction through a warehouse, or (2) by sale through a hoghead tobacco warehouse to a buyer other than the warehouseman, in the regular course of business.

(m) "Operator" means the person who is in charge of the supervision and conduct of the farming operations on the entire farm.

(n) "Person" means an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity, and wherever applicable, a State, a political subdivision of a State or any agency thereof.

(o) Pickups: (1) "Pick-ups (a)" means any tobacco sorted and reclaimed from leaves or bundles which have fallen to the warehouse floor in the usual course of business.

(2) "Pick-ups (b)" means any tobacco previously purchased at auction but not delivered to the buyer because of rejection by the buyer, lost ticket, or any other reason, and which is not turned back to a dealer other than the warehouseman, and shall include tobacco delivered to the buyer but returned by the buyer to the warehouseman, and not turned back by the warehouseman to a dealer.

(p) "Producer" means a person who, as owner, landlord, tenant, share cropper, or laborer is entitled to share in the tobacco available for marketing from the farm or in the proceeds thereof.

(q) "Pound of tobacco" means one pound of tobacco weighed in its unstemmed form and in the condition in which it is usually marketed by producers.

(r) "Resale" means the disposition by sale, barter, exchange, or gift inter vivos, of tobacco which has been marketed previously.

(s) "Sale day" means the period at the end of which the warehouseman bills to buyers the tobacco so purchased during such period.

(t) "Scrap tobacco" means the residue which accumulates in the course of preparing tobacco for market, consisting chiefly of portions of tobacco leaves and leaves of poor quality.

(u) "Secretary" means the Secretary or Acting Secretary of Agriculture of the United States.

(v) "State administrative officer" means the person employed by the State

committee to execute the policies of the State committee and be responsible for the day-to-day operations of the State PMA office, or the person acting in such capacity.

(w) "Suspended sale" means any first marketing of farm tobacco at a warehouse sale for which a memorandum of sale is not issued by the end of the sale day on which such marketing occurred.

(x) "Tobacco" means Maryland tobacco, type 32, as classified in Service and Regulatory Announcement No. 118 (Part 30 of this title) of the Bureau of Agricultural Economics of the United States Department of Agriculture.

Any tobacco that has the same characteristics and corresponding qualities, colors, and lengths as Maryland tobacco shall be considered Maryland tobacco regardless of any factors of historical or geographical nature which cannot be determined by examination of the tobacco.

(y) "Tobacco available for marketing" means all tobacco produced on the farm in the calendar year 1953 plus any carry-over tobacco, less any tobacco disposed of in accordance with § 727.443.

(z) "Tobacco subject to marketing quotas" means any Maryland tobacco marketed during the period October 1, 1953, to September 30, 1954, inclusive, and any Maryland tobacco produced in the calendar year 1953 and marketed prior to October 1, 1953.

(aa) "Trucker" means a person who engages to any extent in the business of trucking or hauling tobacco for producers to a point where it may be marketed or otherwise disposed of in the form and in the condition in which it is usually marketed by producers.

(bb) "Warehouseman" means a person who engages to any extent in the business of holding sales of tobacco at public auction at a warehouse. The term shall also include an individual, association, or firm who engages in receiving tobacco from farmers at the State Tobacco Warehouse, Baltimore, Maryland, and who assists in the sale of such tobacco through such warehouse.

(cc) "Warehouse sale" means a marketing of tobacco by a sale at public auction through a warehouse in the regular course of business, and shall include all lots or baskets of tobacco marketed in sequence at a given time. The term shall also include each marketing of farm tobacco through a hogshead tobacco warehouse to a buyer other than the warehouseman and each marketing of resale tobacco through such warehouse.

§ 727.432 *Instructions and forms.* The Director shall cause to be prepared and issued such forms as are necessary, and shall cause to be prepared such instructions as are necessary, for carrying out the regulations in this part. The forms and instructions shall be approved by, and the instructions shall be issued by, the Assistant Administrator for Production, Production and Marketing Administration.

§ 727.433 *Extent of calculations and rule of fractions.* (a) The acreage of tobacco harvested on a farm in 1953 shall be expressed in tenths, rounding upward all fractions of six hundredths

of an acre or more and dropping all fractions of five hundredths of an acre or less. For example, 4.56 acres would be 4.6 acres, and 4.55 acres would be 4.5 acres.

(b) The percentage of excess tobacco available for marketing from a farm, hereinafter referred to as the "percent excess," shall be expressed in tenths and fractions of less than one-tenth shall be dropped. For example, 12.59 percent would be 12.5 percent.

(c) The amount of penalty per pound upon marketings of tobacco subject to penalty, hereinafter referred to as the "converted rate of penalty," shall be expressed in tenths of a cent and fractions of less than a tenth shall be dropped, except that if the resulting converted rate of penalty is less than a tenth of a cent, it shall be expressed in hundredths and fractions of less than a hundredth shall be dropped. For example, 3.68 cents per pound would be 3.6 cents and 0.068 cent per pound would be 0.06 cent.

FARM MARKETING QUOTAS AND MARKETING CARDS

§ 727.434 *Amount of farm marketing quota.* (a) The marketing quota for a farm shall be the actual production of tobacco on the farm acreage allotment, as established for the farm in accordance with §§ 727.411 to 727.429, 1023 (Maryland-53)-3, Maryland Tobacco Marketing Quota Regulations, 1953-54 (17 F. R. 6622). The actual production of the farm acreage allotment shall be the average yield per acre of the entire acreage of tobacco harvested on the farm in 1953 times the farm acreage allotment.

(b) The excess tobacco on any farm during the 1953-54 marketing year shall be that quantity of tobacco which is equal to the average yield per acre of the entire acreage of tobacco harvested on the farm in 1953 times the number of acres harvested in excess of the 1953 farm acreage allotment. (The excess tobacco on any farm during the 1954-55 marketing year will be (1) that quantity of tobacco which is equal to the average yield per acre of the entire acreage of tobacco harvested on the farm in 1954 times the number of acres harvested in excess of the 1954 farm acreage allotment, plus (2) any excess carry-over tobacco for the farm.) The acreage of tobacco determined for a farm for the purpose of issuing the correct marketing card(s) for the farm, as provided in § 727.436, shall be considered the harvested acreage for the farm unless the farm operator furnishes proof satisfactory to the county committee that a portion of the acreage planted will not be harvested or that a representative portion of the production of the acreage harvested will be disposed of other than by marketing.

§ 727.435 *Transfer of farm marketing quota.* There shall be no transfer of farm marketing quotas except as provided in §§ 727.421 and 727.427 of the Maryland tobacco marketing quota regulations for determining acreage allotments and normal yields, 1953-54 marketing year.

§ 727.436 *Issuance of marketing cards.* A marketing card shall be issued for each farm having 1953 crop tobacco available for marketing. Subject to the approval of the county office manager, two or more marketing cards may be issued for any farm for use in marketing 1953 crop tobacco produced on the farm. All entries on each marketing card shall be made in accordance with the instructions for issuing marketing cards. Upon the return to the county PMA office of the marketing card issued with respect to the 1953 crop after all of the memoranda of sale have been issued therefrom and before the marketing of the 1953 crop tobacco from the farm has been completed, a new marketing card of the same kind, bearing the same name, information and identification as the used card shall be issued for the farm for use in marketing 1953 crop tobacco produced on the farm. A new marketing card of the same kind shall be issued to replace a card which has been determined by the county office manager to have been lost, destroyed or stolen.

A marketing card shall be issued for each farm having carry-over tobacco available for marketing. Such card shall be marked "Carry-Over", shall show the number of pounds and location of such carry-over tobacco as of October 1, 1953, and shall be signed by the farm operator. Subject to the approval of the county office manager, two or more marketing cards, so marked and signed, may be issued for any farm for use in marketing carry-over tobacco. All entries on each marketing card shall be made in accordance with the instructions for issuing marketing cards. Upon the return to the county PMA office of the marketing card issued with respect to carry-over tobacco after all of the memoranda of sale have been issued therefrom and before the marketing of the carry-over tobacco from the farm has been completed, a new marketing card of the same kind, bearing the same name, information and identification as the used card shall be issued for the farm for use in marketing carry-over tobacco from the farm. A new marketing card of the same kind shall be issued to replace a card which has been determined by the county office manager to have been lost, destroyed or stolen.

(a) *Within Quota Marketing Card (MQ-76—Tobacco).* A Within Quota Marketing Card authorizing the marketing without penalty of the 1953 crop tobacco available for marketing shall be issued for a farm under the following conditions:

(1) If the harvested acreage of tobacco in 1953 is not in excess of the 1953 farm acreage allotment;

(2) If all the excess tobacco produced in 1953 on the farm is disposed of in accordance with § 727.443 (b); or

(3) If the tobacco was grown for experimental purposes on land owned or leased by a publicly owned agricultural experiment station and is produced at public expense by employees of the experiment station, or if the tobacco was produced by farmers pursuant to an agreement with a publicly owned experiment station whereby the experiment station bears the costs and risks incident

to the production of the tobacco and the proceeds from the crop inure to the benefit of the experiment station: *Provided*, That such agreement is approved by the State committee prior to the issuance of a marketing card for the farm.

(b) *Within Quota Marketing Card (MQ-76—Tobacco)* marked "Carry-Over". A Within Quota Marketing Card marked "Carry-Over" authorizing the marketing without penalty of carry-over tobacco only from the farm shall be issued for a farm with respect to which there is carry-over tobacco.

(c) *Excess Marketing Card (MQ-77—Tobacco)*. An excess Marketing Card showing the extent to which marketings of 1953 crop tobacco from a farm are subject to penalty shall be issued for a farm under the following conditions:

(1) If the harvested acreage of tobacco in 1953 is in excess of the 1953 farm acreage allotment, and the excess tobacco representative of the entire 1953 crop is not disposed of in accordance with § 727.443 (b); or

(2) If the farm operator fails to disclose, or otherwise furnish, or prevents the representative of the county committee from obtaining, any information necessary to the issuance of the correct marketing card for the 1953 crop in which case an excess marketing card shall be issued for the farm showing that all tobacco from the 1953 crop is subject to the rate of penalty determined by the Secretary pursuant to § 727.445.

§ 727.437 *Person authorized to issue cards*. The county office manager shall be the issuing officer and shall sign marketing cards for farms in the county. The issuing officer may designate not more than three persons to sign his name in issuing marketing cards: *Provided*, That each such person shall place his initials immediately beneath the name of the issuing officer as written by him on the card.

§ 727.438 *Rights of producers in marketing cards*. Each producer having a share in the tobacco available for marketing from a farm shall be entitled to the use of the marketing card issued for the farm for marketing his proportionate share.

§ 727.439 *Successors in interest*. Any person who succeeds in whole or in part to the share of a producer in the tobacco available for marketing from a farm shall, to the extent of such succession, have the same rights as the producer to the use of the marketing card for the farm.

§ 727.440 *Invalid cards*. (a) A marketing card shall be invalid if:

- (1) It is not issued or delivered in the form and manner prescribed;
- (2) Entries are omitted or incorrect;
- (3) It is lost, destroyed, stolen, or becomes illegible; or
- (4) Any erasure or alteration has been made, and not properly initialed.

(b) In the event any marketing card becomes invalid (other than by loss, destruction, or theft, or by omission, alteration or incorrect entry which cannot be corrected by a field assistant), the farm operator, or the person having the card in his possession, shall return

it to the county PMA office at which it was issued.

(c) If any entry is not made on a marketing card as required, either through omission or incorrect entry, and the proper entry is made and initialed by a field assistant, then such card shall become valid.

§ 727.441 *Report of misuse of marketing card*. Any information which causes a field assistant, a member of a State, county, or community committee, or an employee of a State or county PMA office, to believe that any tobacco which actually was produced on one farm has been or is being marketed under the marketing card issued for another farm shall be reported immediately by such person to the county or State PMA office.

MARKETING OR OTHER DISPOSITION OF TOBACCO AND PENALTIES

§ 727.442 *Extent to which marketings from a farm are subject to penalty*. (a) Marketings of 1953 crop tobacco from a farm shall be subject to penalty by the percent excess determined as follows: Divide the acreage of tobacco harvested in excess of the farm acreage allotment and not disposed of under § 727.443 by the total acreage of tobacco harvested from the farm.

(b) For the purpose of determining the penalty due on each marketing by a producer of tobacco subject to penalty, the converted rate of penalty per pound shall be determined by multiplying the rate of penalty determined by the Secretary pursuant to § 727.445 by the percent excess obtained under paragraph (a) of this section. The memorandum of sale issued to identify each such marketing shall show the amount of penalty due.

§ 727.443 *Disposition of excess tobacco*. The farm operator may elect to give satisfactory proof of disposition of excess tobacco prior to the marketing of any 1953 crop tobacco from the farm by either of the following methods:

(a) By storage of all the excess tobacco, the tobacco so stored to be representative of the entire 1953 crop produced on the farm, and posting of a bond approved by the county committee in the penal sum of twice the rate of penalty per pound determined by the Secretary pursuant to § 727.445 times the quantity of excess tobacco stored. Penalty at the applicable full rate per pound on marketings of excess tobacco shall become due upon the removal from storage of the excess tobacco, except that an amount of such tobacco in storage equal to the normal production of the acreage by which the 1954 harvested acreage for the farm is less than the 1954 allotment may be removed from storage and marketed penalty free.

(b) By furnishing to the county committee satisfactory proof that excess tobacco representative of the entire crop will not be marketed.

§ 727.444 *Identification of marketings*. Each marketing of tobacco from a farm shall be identified by an executed memorandum of sale from the 1953 marketing card (MQ-76—Tobacco or MQ-77—Tobacco) issued for the farm on which the tobacco was produced. In

addition, in the case of nonwarehouse sales, each marketing shall also be identified by an executed bill of nonwarehouse sale (reverse side of memorandum of sale). A separate memorandum from a marketing card marked "Carry-over" issued for the farm will be executed with respect to each marketing of tobacco produced prior to 1953, and the words "old crop" will be entered by the warehouseman or buyer on each such memorandum executed with respect to a marketing of tobacco produced prior to 1953.

(a) *Memorandum of sale*. (1) If a memorandum of sale is not executed to identify a warehouse sale of producer's tobacco by the end of the sale day on which the tobacco was marketed, the marketing shall be a suspended sale, and, unless a memorandum identifying the tobacco so marketed is executed on or before the last warehouse sale day of the marketing season, or within four weeks after the date of marketing, whichever comes first, the marketing shall be identified by MQ-82—Tobacco, Sale Without Marketing Card, as a marketing of excess tobacco. The memorandum of sale or MQ-82—Tobacco shall be executed only by a field assistant or other representative of the State Administrative officer with the following exceptions:

(i) A warehouseman, or his representative, who has been authorized on MQ-78—Tobacco, may issue a memorandum of sale to identify a warehouse sale if a field assistant is not available at the warehouse when the marketing card is presented. Each memorandum of sale issued by a warehouseman to cover a warehouse sale shall be presented promptly by him to the field assistant for verification with the warehouse records.

(ii) A tobacco dealer who buys tobacco direct from farmers, who resells such tobacco through a hogshead tobacco warehouse and who keeps records showing the information specified in § 727.452, and who has been authorized on MQ-78—Tobacco to issue memoranda of sale, may issue a memorandum of sale covering a purchase of such tobacco only if the bill of nonwarehouse sale has been executed. Such dealer may also execute MQ-82—Tobacco, where applicable, under the circumstances specified in this section.

(2) The authorization on MQ-78—Tobacco to issue memoranda of sale may be withdrawn by the State administrative officer from any warehouseman or dealer if such action is determined to be necessary in order to properly enforce the provisions of §§ 727.430 to 727.460. The authorization shall terminate upon receipt of written notice setting forth the reason therefor.

(3) Each excess memorandum of sale issued by a field assistant shall be verified by a warehouseman or dealer (or his representative) to determine whether the amount of penalty shown to be due has been correctly computed and such warehouseman or dealer shall not be relieved of any liability with respect to the amount of penalty due because of any error which may occur in executing the memorandum of sale.

(b) *Bill of nonwarehouse sale.* (1) Each nonwarehouse sale shall be identified by a bill of nonwarehouse sale completely executed by the buyer and the farm operator.

(2) Each bill of nonwarehouse sale covering any marketing (except as described under paragraph (a) (1) (ii) of this section) shall be presented to a field assistant for the issuance of a memorandum of sale and for recording in MQ-79—Tobacco.

§ 727.445 *Rate of penalty.* (a) The penalty per pound upon marketings of excess tobacco subject to marketing quotas shall be forty (40) percent of the average market price (calculated to the nearest whole cent) for Maryland tobacco for the 1952-53 marketing year, as determined by the Secretary.

(b) With respect to tobacco marketed from farms having excess tobacco available for marketing the penalty shall be paid upon that percentage of each lot of 1953 crop tobacco marketed which the 1953 crop tobacco available for marketing in excess of the farm quota is of the total amount of 1953 crop tobacco available for marketing from the farm.

§ 727.446 *Persons to pay penalty.* The person to pay the penalty due in any marketing of tobacco subject to penalty shall be determined as follows:

(a) *Warehouse sale.* The penalty due on marketings by a producer through a warehouse shall be paid by the warehouseman who may deduct an amount equivalent to the penalty from the price paid to the producer.

(b) *Nonwarehouse sale.* The penalty due on tobacco purchased directly from a producer other than (1) by sale at public auction through a warehouse, or (2) by sale through a hogshead tobacco warehouse to a buyer other than the warehouseman, in the regular course of business, shall be paid by the purchaser of the tobacco who may deduct an amount equivalent to the penalty from the price paid to the producer.

(c) *Marketings through an agent.* The penalty due on marketings by a producer through an agent who is not a warehouseman shall be paid by the agent who may deduct an amount equivalent to the penalty from the price paid to the producer.

(d) *Marketings outside the United States.* The penalty due on marketings by a producer directly to any person outside the United States shall be paid by the producer.

§ 727.447 *Marketings deemed to be excess tobacco.* Any marketing of tobacco under any one of the following conditions shall be deemed to be a marketing of excess tobacco:

(a) *Warehouse sale.* Any warehouse sale of tobacco by a producer which is not identified by a valid memorandum of sale on or before the last warehouse sale day of the marketing season or within four weeks following the date of marketing, whichever comes first, shall be identified by a MQ-82—Tobacco, and shall be deemed to be a marketing of excess tobacco. The penalty thereon shall be paid by the warehouseman.

(b) *Nonwarehouse sale.* Any nonwarehouse sale which (1) is not identified by a valid bill of nonwarehouse sale (reverse side of memorandum of sale) and (2) is not also identified by a valid memorandum of sale and recorded in MQ-79—Tobacco within one week following the date of purchase, or, if purchased prior to the opening of the local auction markets (if the tobacco is not to be resold through a hogshead tobacco warehouse), is not identified by a valid memorandum of sale and recorded in MQ-79—Tobacco within one week following the first sale day of the local auction markets, shall be deemed to be a marketing of excess tobacco. The penalty thereon shall be paid by the purchaser of such tobacco.

(c) *Leaf account tobacco.* The part or all of any marketing by a warehouseman which such warehouseman represents to be a leaf account resale but which when added to prior leaf account resales, as reported under §§ 727.430 to 727.460, is in excess of prior leaf account purchases shall be deemed to be a marketing of excess tobacco unless and until such warehouseman furnishes proof acceptable to the State committee showing that such marketing is not a marketing of excess tobacco. The penalty thereon shall be paid by the warehouseman.

(d) *Dealer's tobacco.* The part or all of any marketing of tobacco by a dealer which such dealer represents to be a resale but which when added to prior resales by such dealer is in excess of the total of his prior purchases as reported on MQ-79—Tobacco shall be deemed to be a marketing of excess tobacco unless and until such dealer furnishes proof acceptable to the State committee showing that such marketing is not a marketing of excess tobacco. The penalty thereon shall be paid by the dealer.

(e) *Marketings not reported.* Any resale of tobacco which under §§ 727.430 to 727.460 is required to be reported by a warehouseman or dealer but which is not so reported within the time and in the manner required by §§ 727.430 to 727.460 shall be deemed to be a marketing of excess tobacco unless and until such warehouseman or dealer furnishes a report of such resale which is acceptable to the State committee. The penalty thereon shall be paid by the warehouseman or dealer who fails to make the report as required.

(f) *Producer marketings.* If any producer falsely identifies or fails to account for the disposition of any tobacco produced on a farm, an amount of tobacco equal to the normal yield of the number of acres harvested in 1953 in excess of the farm acreage allotment shall be deemed to have been a marketing of excess tobacco from such farm. The penalty thereon shall be paid by the producer.

§ 727.448 *Payment of penalty.* (a) Penalties shall become due at the time the tobacco is marketed, except in the case of tobacco removed from storage as provided in § 727.443 (a), and shall be paid by remitting the amount thereof to the State PMA office not later than the end of the calendar week following

the week in which the tobacco became subject to penalty. A draft, money order, or check drawn payable to the Treasurer of the United States may be used to pay any penalty, but any such draft or check shall be received subject to payment at par.

(b) If the penalty due on any warehouse sale of tobacco by a producer as determined under §§ 727.430 to 727.460 is in excess of the net proceeds of such sale (gross amount for all lots included in the sale less usual warehouse charges), the amount of the net proceeds accompanied by a copy of the warehouse bill covering such sale may be remitted as the full penalty due. Usual warehouse charges shall not include (1) advances to producers, (2) charges for hauling, or (3) any other charges not usually incurred by producers in marketing tobacco through a warehouse.

(c) Nonwarehouse sales shall be subject to the converted rate of penalty for the farm on which the tobacco was produced without regard to the net proceeds of the sale.

§ 727.449 *Request for return of penalty.* Any producer of tobacco after the marketing of all tobacco available for marketing from the farm and any other person who bore the burden of the payment of any penalty may request the return of the amount of such penalty which is in excess of the amount required under §§ 727.430 to 727.460 to be paid. Such request shall be filed with the county PMA office within two (2) years after the payment of the penalty.

RECORDS AND REPORTS

§ 727.450 *Producer's records and reports—(a) Report on marketing card.* The operator of each farm on which tobacco is produced in 1953 or for which a marketing card is issued, shall return to the county PMA office each marketing card issued for the farm whenever marketings from the farm are completed and in no event later than October 1, 1954. Failure to return the marketing card within fifteen (15) days after written notice by the county office manager shall constitute failure to account for disposition of tobacco marketed from the farm and in the event that a satisfactory account of such disposition is not furnished otherwise the allotment next established for such farm shall be reduced as provided in Maryland tobacco marketing quota regulations for determining acreage allotments and normal yields, 1954-55 marketing year.

(b) *Additional reports by producers.* In addition to any other reports which may be required under §§ 727.430 to 727.460, the operator of each farm or any other person having an interest in the tobacco grown on the farm (even though the harvested acreage does not exceed the acreage allotment or even though no allotment was established for the farm) shall upon written request by registered mail from the State Administrative officer and within fifteen (15) days after the deposit of such request in the United States mails, addressed to such person at his last known address, furnish the Secretary a written report

of the disposition made of all tobacco produced on the farm by sending the same to the State PMA office showing, as to the farm at the time of filing said report, (1) the number of acres of tobacco harvested, (2) the total production of tobacco, (3) the amount of tobacco on hand and its location, and (4) as to each lot of tobacco marketed, the name and address of the warehouseman, dealer, or other person to or through whom such tobacco was marketed and the number of pounds marketed, the gross price, and the date of the marketing. Failure to file the report as requested or the filing of a report which is found by the State committee to be incomplete or incorrect shall constitute failure of the producer to account for disposition of tobacco produced on the farm and the allotment next established for such farm shall be reduced as provided in the Maryland tobacco marketing quota regulations for determining acreage allotments and normal yields, 1954-55 marketing year.

§ 727.451 Warehouseman's records and reports—(a) Record of marketing.

(1) Each warehouseman shall keep such records as will enable him to furnish the State PMA office with respect to each warehouse sale of tobacco made at his warehouse the following information:

(i) The name of the operator of the farm on which the tobacco was produced and the name of the seller in the case of a sale by a producer, and in the case of a resale the name of the seller.

(ii) Date of sale.

(iii) Number of pounds sold.

(iv) Gross sale price.

(v) Amount of any penalty and the amount of any deduction on account of penalty from the price paid the producer(s);

and in addition with respect to each individual basket or lot of tobacco constituting the warehouse sale the following information:

(vi) Name of purchaser.

(vii) Number of pounds sold.

(viii) Gross sale price.

(2) Records of all purchases and resales of tobacco by the warehouseman shall be maintained to show a separate account for:

(i) Nonwarehouse sales by farmers of tobacco purchased by or on behalf of the warehouseman.

(ii) Purchases and resales for the warehouse leaf account.

(iii) Resales of floor sweepings.

(iv) Resales of pick-ups (subparagraphs (1) and (2) of § 727.431 (c)).

(3) Any warehouseman or any other person who grades tobacco for farmers shall maintain records which will enable him to furnish the State PMA office the name of the farm operator and the approximate amount of scrap tobacco obtained from the grading of tobacco from each farm.

(4) In the case of resales for dealers the name of the dealer making each resale shall be shown on the warehouse records so that the individual lots of tobacco sold by the dealer can be identified.

(b) Identification of sale on check register (or ledger account in case of a

sale through a hogshead tobacco warehouse). The serial number of the memorandum of sale issued to identify each warehouse sale by a producer or the serial number of the warehouse bill(s) covering each such sale shall be recorded on the check register or check stub for the check written with respect to such sale of tobacco (or on the ledger account in the case of a sale through a hogshead tobacco warehouse).

(c) Memorandum of sale and bill of nonwarehouse sale. A record in the form of a valid memorandum of sale or a sale without marketing card shall be obtained by a warehouseman to cover each marketing of tobacco from a farm through the warehouse and each nonwarehouse sale of tobacco purchased by or for the warehouseman. For a nonwarehouse sale of tobacco purchased by or for a warehouseman, no memorandum of sale shall be issued unless the bill of nonwarehouse sale on the reverse side of the memorandum of sale is executed. Any warehouseman who obtains possession of any scrap tobacco in the course of grading tobacco from any farm shall obtain a bill of nonwarehouse sale and a memorandum of sale to cover the amount of such scrap.

(d) Suspended sale record. Any warehouse bills covering farm tobacco for which memoranda of sale have not been issued at the end of the sale day shall be presented to a field assistant who shall stamp such bills "suspended," write thereon the serial number of the suspended sale, and, if the warehouse is not a hogshead warehouse, record the bills on MQ-83—Tobacco, Field Assistant's Report: *Provided*, That if a field assistant is not available, the warehouseman may stamp such bills "Suspended" and deliver them to a field assistant when one is available.

(e) Warehouse entries on dealer's record. Each warehouseman, other than a hogshead tobacco warehouseman, shall record on MQ-79—Tobacco the total purchases and resales made by each dealer or other warehouseman during each sale day at the warehouse and enter his initials in the space provided. If any tobacco resold by the dealer is tobacco bought by him from a crop produced prior to 1953 the entry on MQ-79—Tobacco shall clearly show such fact.

(f) Record and report of purchases and resales. Each warehouseman shall keep a record and make reports on MQ-79—Tobacco, Dealer's Record, showing:

(1) All purchases, by or for the warehouse, of tobacco directly from producers other than at public auction through a warehouse (nonwarehouse sales) (also including, in the case of a hogshead tobacco warehouseman, purchases at the hogshead tobacco warehouse by or for such warehouseman at auction from producers).

(2) All purchases and resales, by or for the warehouse, of tobacco at public auction through warehouses other than his own.

(3) All purchases, by or for the warehouse, of tobacco from dealers other than warehousemen and resales, by or for the warehouse, of tobacco to dealers other than warehousemen.

(g) Season report of warehouse business. (1) Each warehouseman, other than a hogshead tobacco warehouseman, shall furnish the State PMA office not later than thirty (30) days following the last sale day of the marketing season a report on MQ-80—Tobacco, Auction Warehouse Report, showing (i) for each dealer or buyer, as originally billed, the total pounds and gross amount of tobacco purchased and resold on the warehouse floor; (ii) the total pounds and gross amount of "loan tobacco" billed to any association; (iii) the total pounds and gross amount of all leaf account tobacco purchased and resold and of all pick-ups (§ 727.431 (c) (1) or (2)), or floor sweepings sold by the warehouseman at public auction over his own warehouse floor; (iv) the pounds and estimated value of all tobacco on hand at the time of filing the report and whether such tobacco represents leaf account tobacco, pick-ups (§ 727.431 (c) (1) or (2)), or floor sweepings; (v) the total pounds and the gross amount of all tobacco purchased directly from farmers other than at public auction through a warehouse; and (vi) the total pounds and gross amount of all purchases over other warehouse floors or from dealers other than warehousemen, and all resales over other warehouse floors or to dealers other than warehousemen. A hogshead tobacco warehouseman, also, shall report all leaf account tobacco purchased or sold and all floor sweepings and pick-ups sold, if any, through the warehouse.

(2) A hogshead tobacco warehouseman shall submit weekly reports (each such report to be submitted not later than the end of the calendar week following the week during which the transactions occurred) to the State PMA office including for each buyer who purchased tobacco (and any association to which any "loan" tobacco was consigned) through the warehouse during the week for which the report is submitted, a copy of the bill-out to the buyer (or association) together with the following:

(i) Name of farm operator (and name of seller if different from farm operator) for each sale of farm tobacco.

(ii) Farm serial number of the farm for each sale of farm tobacco.

(iii) Serial number of memorandum of sale or memorandum of sale without marketing card executed with respect to each sale of farm tobacco.

(iv) Date of sale (or date of consignment to loan association).

(v) Hogshead serial number.

(vi) Number of pounds of tobacco in the hogshead.

(vii) Designation as to whether the tobacco in the hogshead was produced in 1953 or in a year prior to 1953.

(viii) A memorandum of sale or a memorandum of sale without marketing card for each sale of farm tobacco produced in 1953, and a memorandum of sale or a memorandum of sale without marketing card for each sale of farm tobacco produced prior to 1953.

(ix) A remittance of the penalty due as shown on all memoranda of sale all memoranda of sale without marketing card.

(x) Designation by the word "resale" and the name of the person re-selling the tobacco entered on the bill-out for tobacco resold through the hogshead warehouse.

(h) *Report of penalties.* Each warehouseman, other than a hogshead tobacco warehouseman, shall make reports on MQ-81—Tobacco, Report of Penalties, showing for each sale of tobacco subject to penalty (1) the name of the farm operator; (2) the memorandum number; (3) the name of the county in which the farm is located; (4) the farm serial number; (5) the number of pounds sold; (6) the applicable converted rate of penalty; and (7) the amount of penalty due on each such sale. MQ-81—Tobacco shall be prepared for each week and forwarded together with remittance of the penalty due as shown thereon to the State PMA office not later than the end of the calendar week following the week in which the tobacco became subject to penalty.

(i) *Report of resales.* Each warehouseman, other than a hogshead tobacco warehouseman, shall make reports on MQ-86—Tobacco, Report of Resales, showing for each resale of tobacco at auction on the warehouse floor (1) the warehouse bill number; (2) the name on the warehouse bill; (3) the name of the seller, or in the case of a resale for the warehouse, whether such resale represents leaf account tobacco, pick-ups, or floor sweepings; (4) the registration number and State of the person making the resale; (5) the number of pounds sold; and (6) the gross amount for the sale. MQ-86—Tobacco shall be prepared for each sale day and forwarded to the State PMA office not later than the end of the calendar week following the week in which the tobacco was resold.

(j) *Additional records and reports by warehousemen.* Each warehouseman shall keep such records and furnish such reports to the State PMA office in addition to the foregoing, as the State committee may find necessary to insure the proper identification of the marketings of tobacco and the collection of penalties due thereon as provided in §§ 727.430 to 727.460.

§ 727.452 *Dealer's records and reports.* Each dealer, except as provided in § 727.453, shall keep the records and make the reports as provided by this section.

(a) *Report of dealer's name, address and registration number.* Each dealer shall properly execute and the field assistant (or the dealer, if the tobacco is to be marketed through a hogshead tobacco warehouse) shall detach and forward to the State PMA office "Receipt for Dealer's Record" contained in MQ-79—Tobacco which is issued to the dealer.

(b) *Record and report of purchases and resales.* Each dealer shall keep a record and make reports on MQ-79—Tobacco, Dealer's Record, showing all purchases and resales of tobacco made by or for the dealer and, in the event of resale of tobacco bought from a crop produced prior to 1953, the fact that such tobacco was bought by him from a crop produced prior to 1953.

(c) *Report of penalties.* Each dealer, unless the tobacco is to be marketed through a hogshead tobacco warehouse, shall make a report on MQ-81—Tobacco, Report of Penalties, showing for each purchase, other than by warehouse sale, of tobacco subject to penalty (1) the name of the farm operator; (2) the memorandum number; (3) the name of the county in which the farm is located; (4) the farm serial number; (5) the number of pounds purchased; (6) the applicable converted rate of penalty; and (7) the amount of penalty due on each such purchase. MQ-81—Tobacco shall be prepared for each week and forwarded together with remittance of the penalty due as shown thereon to the State PMA office not later than the end of the calendar week following the week in which the tobacco became subject to penalty. A dealer who purchases tobacco which is to be marketed through a hogshead tobacco warehouse shall remit the penalty with his reports on MQ-79—Tobacco, Dealer's Record, together with memoranda of sale and memoranda of sale without marketing card to the State PMA office not later than the end of the calendar week following the week during which he purchased the tobacco.

(d) *Memorandum of sale and bill of nonwarehouse sale.* (1) A bill of nonwarehouse sale and a memorandum of sale from the 1953 marketing card issued for the farm on which the tobacco was purchased shall be obtained by a dealer to cover each purchase of tobacco directly from a producer other than at auction through a warehouse. No memorandum of sale shall be issued identifying such purchase unless the bill of nonwarehouse sale on the reverse side of the memorandum of sale has been executed.

(2) Any dealer who acquires scrap tobacco from any farm shall obtain a bill of nonwarehouse sale and a memorandum of sale to cover the amount of such scrap tobacco.

(e) *Additional records.* Each dealer shall keep such records in addition to the foregoing as will enable him to furnish the State PMA office with respect to each lot of tobacco purchased by him the following information:

(1) The name of the warehouse through which the tobacco was purchased in the case of a warehouse sale; the name of the operator of the farm on which the tobacco was produced and the name of the seller in the case of a nonwarehouse sale; and the name of the seller in the case of purchases directly from warehousemen or other dealers.

(2) Date of purchase.

(3) Number of pounds purchased.

(4) Gross purchase price.

(5) Amount of any penalty and the amount of any deduction on account of penalty from the price paid the producer(s); and with respect to each lot of tobacco sold by him the following information:

(6) Name of the warehouse through which the tobacco was sold in the case of a warehouse sale, and the name of the purchaser if other than a warehouse sale.

(7) Date of sale.

(8) Number of pounds sold.

(9) Gross sale price.

(10) In the event of a resale of tobacco bought by him and carried over from a crop produced prior to 1953 the fact that such tobacco was bought by him from a crop prior to 1953.

(f) *Forwarding of reports.* All reports shall be forwarded to the State PMA office not later than the end of the week following the calendar week covered by the reports.

§ 727.453 *Dealers exempt from regular records and reports.* Any dealer or buyer who does not purchase or otherwise acquire tobacco except at warehouse sales, or directly from dealers other than warehousemen, and who does not resell in the form in which tobacco ordinarily is sold by farmers more than 10 percent of such tobacco so purchased by him shall not be subject to the provisions of § 727.452: *Provided, however,* That any such dealer or buyer who purchases tobacco at nonwarehouse sale, or from a warehouseman other than at warehouse sale, shall be subject to the provisions of § 727.452 with respect to such purchases. Each such dealer or buyer shall make such reports to the Director, in addition to the foregoing, as he may find necessary to enforce §§ 727.430 to 727.460, and each dealer or buyer who is not subject to the provisions of § 727.452 shall make such reports to the Director as he may find necessary to enforce §§ 727.430 to 727.460.

§ 727.454 *Records and reports of truckers and persons redrying, prizing or stemming tobacco.* (a) Each person engaged to any extent in the business of trucking or hauling tobacco for producers to a point where it may be marketed or otherwise disposed of in the form and in the condition in which it is usually marketed by producers shall keep such records as will enable him to furnish the State PMA office a report with respect to each lot of tobacco received by him showing (1) the name and address of the producer, (2) the date of receipt of the tobacco, (3) the number of pounds received and (4) the name and address of the person to whom it was delivered.

(b) Each person engaged to any extent in the business of redrying, prizing or stemming tobacco for producers shall keep such records as will enable him to furnish the Director a report showing (1) the information required above for truckers, and in addition, (2) the purpose for which the tobacco was received, (3) the amount of advance made by him on the tobacco, and (4) the disposition of the tobacco.

(c) Each such person shall make such reports to the Director as he may find necessary to enforce §§ 727.430 to 727.460.

§ 727.455 *Separate records and reports from persons engaged in more than one business.* Any person who is required to keep any record or make any report as a warehouseman, dealer, trucker, or as a person engaged in the business of redrying, prizing or stemming tobacco for producers, and who is engaged in more than one such business, shall keep such records as will enable him to make separate reports for each such business in which he is engaged to the same ex-

tent for each such business as if he were engaged in no other business.

§ 727.456 Failure to keep records or make reports. Any warehouseman, dealer, trucker, or person engaged in the business of redrying, prizing, or stemming tobacco for producers, who fails to make any report or keep any record as required under §§ 727.430 to 727.460, or who makes any false report or record, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than \$500; and any tobacco warehouseman or dealer who fails to remedy such violation by making a complete and accurate report or keeping a complete and accurate record as required under these regulations within fifteen days after notice to him of such violation shall be subject to an additional fine of \$100 for each ten thousand pounds of tobacco, or fraction thereof, bought or sold by him after the date of such violation: *Provided*, That such fine shall not exceed \$5,000; and notice of such violation shall be served upon the tobacco warehouseman or dealer by mailing the same to him by registered mail or by posting the same at an established place of business operated by him, or both. Notice of any violation by a warehouseman, dealer, trucker, or person engaged in the business of redrying, prizing or stemming tobacco for producers shall be given by the Director.

§ 727.457 Examination of records and reports. For the purpose of ascertaining the correctness of any report made or record kept, or of obtaining information required to be furnished in any report but not so furnished, any warehouseman, dealer, trucker, or person engaged in the business of redrying, prizing, or stemming tobacco for producers shall make available for examination upon written request by the State Administrative officer or Director, such books, papers, records, accounts, cancelled checks, correspondence, contracts, documents, and memoranda as the State Administrative officer or Director has reason to believe are relevant and are within the control of such person.

§ 727.458 Length of time records and reports are to be kept. Records required to be kept and copies of the reports required to be made by any person under §§ 727.430 to 727.460 for the 1953-54 marketing year shall be kept by him until September 30, 1956. Records shall be kept for such longer period of time as may be requested in writing by the Director.

§ 727.459 Information confidential. All data reported to or acquired by the Secretary pursuant to the provisions of §§ 727.430 to 727.460 shall be kept confidential by all officers and employees of the United States Department of Agriculture and by all members of county and community committees and all county PMA office employees, and only such data so reported or acquired as the Assistant Administrator for Production, Production and Marketing Administration, deems relevant shall be disclosed by them and then only in a suit or ad-

ministrative hearing under Title III of the act.

§ 727.460 Redelegation of authority. Any authority delegated to the State committee by §§ 727.430 to 727.460 may be redelegated by the State committee.

NOTE: The record keeping and reporting requirements of these regulations have been approved by and subsequent reporting requirements will be subject to the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Prior to the final adoption and issuance of such regulations, consideration will be given to any data, views, or recommendations pertaining thereto which are submitted in writing to the Director, Tobacco Branch, Production and Marketing Administration, United States Department of Agriculture, Washington 25, D. C. All submissions must be postmarked not later than fifteen days from the date of publication of this notice in the FEDERAL REGISTER in order to be considered.

Done at Washington, D. C., this 5th day of June 1953.

[SEAL] HOWARD H. GORDON,
Administrator.
[F. R. Doc. 53-5181; Filed, June 10, 1953;
8:53 a. m.]

[7 CFR Part 801]

1953 SUGAR QUOTA FOR MAINLAND SUGARCANE AREA

NOTICE OF HEARING ON PROPOSED ALLOTMENT

Pursuant to the authority contained in the Sugar Act of 1948, as amended, (61 Stat. 922, as amended by 65 Stat. 318; 7 U. S. C. Sup. 1100) and in accordance with the applicable rules of practice and procedure (12 F. R. 8225, 13 F. R. 127, 2063; 7 CFR 801, et seq.), and on the basis of information before me, I do hereby find that the allotment of the 1953 sugar quota for the Mainland Cane Sugar Area is necessary to prevent disorderly marketing and to afford all interested persons an equitable opportunity to market sugar, and hereby give notice that a public hearing will be held at the Hotel Monteleone, New Orleans, Louisiana, on June 23, 1953, beginning at 10:00 a. m., c. s. t.

The purpose of such hearing is to receive evidence to enable the Secretary of Agriculture to make a fair, efficient, and equitable distribution of the above-mentioned quota among persons who market sugar processed from sugarcane produced in the Mainland Cane Sugar Area.

The finding made above is in the nature of a preliminary finding based on the best information now available. It will be appropriate at the hearing to present evidence on the basis of which the Secretary may affirm, modify, or change such preliminary finding and make or withhold allotment of any such quota in accordance therewith.

Proposal for allotment of the quota. The Department representative will propose at the hearing that the 1953 quota for the Mainland Cane Sugar Area be

allotted by giving equal weight to each of the three factors specified in section 205 (a) of the act, measuring each factor as follows:

(1) Processings of sugar or liquid sugar from sugarcane to which proportionate shares, determined pursuant to the provisions of subsection (b) of section 302, pertained, to be measured by the production of sugar from 1952-crop sugarcane.

(2) Past marketings to be measured by average annual marketings for each allottee for the three years remaining after excluding the years of smallest and largest annual marketings from the period 1948 through 1952.

(3) Ability to market to be measured by the largest annual marketings in any of the years 1948 through 1952.

For each factor, the quantity for each allottee will be converted to a percentage of the total for all allottees. The sum of the percentages for each of the factors, divided by three and multiplied by the quota would determine the proposed allotment.

Issued this 8th day of June 1953.

[SEAL] TRUE D. MORSE,
Acting Secretary of Agriculture.
[F. R. Doc. 53-5180; Filed, June 10, 1953;
8:53 a. m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board and Maritime Administration

[46 CFR Parts 201, 202, 203]

[Gen. Order 41, 2d Rev.]

RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that the Federal Maritime Board and the Maritime Administration have under consideration various proposed changes in their present rules of practice and procedure. The present rules are fully set forth in the United States Maritime Commission's General Order 41, Revised, and General Order 21, Revised (46 CFR Parts 201, 202 and 203), published in the FEDERAL REGISTER (12 F. R. 6076, 6086). A copy of the proposed order effecting the proposed changes in the rules of practice and procedure is subjoined and made a part of this notice.

All persons (including individuals, corporations, associations, firms, partnerships, and public bodies) having an interest in the proposed rules may submit written comments with reference to any or all of said rules to the Federal Maritime Board, Washington 25, D. C., within 10 days after publication of this notice in the FEDERAL REGISTER.

Dated: June 4, 1953.

By order of the Federal Maritime Board.

A. J. WILLIAMS,
Secretary.

By order of the Maritime Administration.

A. J. WILLIAMS,
Secretary.

1. The headnote of subchapter A is changed to read "Subchapter A. Practice and Procedure."

2. It is ordered, That Part 201, Rules of Procedure Before the Commission, Part 202, Approved Forms, and Part 203, Practice Before the Commission (General Order 41, Revised, and General Order 21, Revised, published in the FEDERAL REGISTER (12 F. R. 6076, 6086)), be, and the same are hereby, superseded and revised as a new Part 201 which shall read as set forth below:

Part 201 prescribes rules of practice and procedure before the Federal Maritime Board and the Maritime Administration in proceedings under the Shipping Act, 1916, as amended, Merchant Marine Act, 1920, as amended, Intercoastal Shipping Act, 1933, as amended, Merchant Marine Act, 1936, as amended, Administrative Procedure Act, and related acts.

PART 201—RULES OF PRACTICE AND PROCEDURE BEFORE THE FEDERAL MARITIME BOARD AND THE MARITIME ADMINISTRATION

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AUTHORITY: §§ 201.1 to 201.271 issued under sec. 204 (b), 49 Stat. 1987, secs. 3, 12, 60 Stat. 238, 244; 46 U. S. C. 1114 (b), 5 U. S. C. Sup. 1002, 1011.

SUBPART A—GENERAL INFORMATION

§ 201.1 Scope of rules. The rules in this part govern procedure before the Federal Maritime Board and Maritime Administration, hereinafter referred to collectively as the "Board", under the Shipping Act, 1916, as amended, Intercoastal Shipping Act, 1933, as amended, Merchant Marine Act, 1936, as amended, Administrative Procedure Act, and related acts, except as may be

provided otherwise by the Board. They shall be construed to secure the just, speedy, and inexpensive determination of every proceeding.

§ 201.2 Mailing address; hours. Documents required to be filed in, and correspondence relating to, proceedings governed by this part should be addressed to "Federal Maritime Board, Washington 25, D. C." The hours of the Board are from 8:30 a. m. to 5:00 p. m., Monday to Friday, inclusive, unless otherwise provided by Federal statute or executive order.

§ 201.3 Compliance with rules or orders of Board. Persons named in a rule or order shall notify the Board during business hours on or before the day on which such rule or order becomes effective whether they have complied therewith and, if so, the manner in which compliance has been made. If a change in rates is required, the notification shall specify the tariffs which effect the changes.

§ 201.4 Authentication of rules or orders of the Board. All rules or orders issued in any proceeding covered by the rules in this part shall, unless otherwise specifically provided by the Board be signed and authenticated by seal by the Secretary of the Board in the name of the Board.

§ 201.5 Inspection of records. (a) The files and records of the Board, except those held by the Board for good cause to be confidential, shall be open for inspection and copying as follows:

(1) Tariffs and agreements filed with the Board pursuant to statute or rule or order of the Board may be inspected and copied during business hours in the Regulation Office at Washington.

(2) All pleadings, depositions, exhibits, transcripts of testimony, exceptions, and briefs in any statutory proceeding before the Board may be inspected and copied at the Washington office of the Board. Volumes of Federal Maritime Board reports may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D. C. Copies of individual decisions may be secured from the Board upon request, or may be examined in the regional offices of the Maritime Administration.

(3) Other files and records may be inspected and copied in the discretion of the Board upon written request to the Secretary describing in detail the documents of which inspection is desired, and setting forth the reasons therefor.

(b) Orders, rules, rulings, opinions, and decisions (initial, recommended, tentative, and final) may be inspected at the Washington office of the Board, except those held by the Board for good cause to be confidential and not cited as precedents.

§ 201.6 Certified copies; requests for. Copies of documents which may be inspected subject to the provisions of § 201.5 will be prepared and certified by the Secretary under the seal of the Board if written request is made specifying the exact documents, the number of copies desired, and the date on which the same will be required. Such request shall per-

mit a reasonable time for the preparation of copies. The cost of preparing copies shall be paid by the one making the request.

§ 201.7 Documents in foreign languages. Every document, exhibit, or other paper written in a language other than English and filed with the Board or offered in evidence in any proceeding before the Board under the rules in this part or in response to any rule or order of the Board pursuant to the rules in this part, shall be filed or offered in the language in which it is written and shall be accompanied by an English translation thereof duly verified under oath to be a true translation.

§ 201.8 Denial of applications and notice thereof. Except in affirming a prior denial or where the denial is self-explanatory, prompt written notice will be given of the denial in whole or in part of any written application, petition, or other request made in connection with any proceeding under the rules in this part, such notice to be accompanied by a simple statement of procedural or other grounds for the denial, and of any other or further administrative remedies or recourse applicant may have where the denial is based on procedural grounds.

§ 201.9 Suspension, amendment, etc., of rules. The rules in this part may, from time to time, be suspended, amended, or revoked, in whole or in part. Notice of any such action will be published in the FEDERAL REGISTER. Also, any rule may be waived by the Board or the presiding officer to prevent undue hardship in any particular case.

SUBPART B—APPEARANCES AND PRACTICE BEFORE THE BOARD

§ 201.21 Appearance in person or by representative. A party may appear in person or by an officer, partner, or regular employee of the party, or by or with counsel or other duly qualified representative, in any proceeding under the rules in this part. One who appears under this section may testify, produce and examine witnesses, and be heard upon brief and at oral argument if oral argument is granted.

§ 201.22 Authority for representation. Any individual acting in a representative capacity in any proceeding before the Board may be required to show his authority to act in such capacity.

§ 201.23 Written appearance. Persons who appear at any hearing shall deliver a written notation of appearance to the reporter, stating for whom the appearance is made. The written appearance shall be made a part of the record.

§ 201.24 Practice before the Board defined. Practice before the Board shall be deemed to comprehend all matters connected with the presentation of any matter to the Board, including the preparation and filing of necessary documents, and correspondence with and communications to the Board. The term "Board" as used in this part includes any division, office, branch, section, unit, or field office of the Federal

Maritime Board or Maritime Administration and any officer or employee of such division, office, branch, section, unit, or field office.

§ 201.25 Attorneys at law. Attorneys at law who are admitted to practice before the Federal courts or before the courts of any State or territory of the United States may practice before the Board. An attorney's own representation that he is such in good standing before any of the courts herein referred to will be sufficient proof thereof.

§ 201.26 Persons not attorneys at law. Any person who is not an attorney at law may be admitted to practice before the Board if he is a citizen of the United States and files proof to the satisfaction of the Board that he possesses the necessary legal, technical, or other qualifications to enable him to render valuable service before the Board and is otherwise competent to advise and assist in the presentation of matters before the Board. Applications by persons not attorneys at law for admission to practice before the Board shall be made on the forms prescribed therefor, which may be obtained from the Secretary of the Board, and shall be addressed to the Federal Maritime Board, Washington 25, D. C. No person who is not an attorney at law and whose application has not been approved shall be permitted to practice before the Board. This provision and the provisions of §§ 201.28, 201.29, and 201.30 shall not apply, however, to any person who appears before the Board on his own behalf or on behalf of any corporation, partnership, or association of which he is a partner, officer or regular employee.

§ 201.27 Firms and corporations. Practice before the Board by firms or corporations on behalf of others shall not be permitted.

§ 201.28 Hearings. The Board in its discretion may call upon the applicant for a full statement of the nature and extent of his qualifications. If the Board is not satisfied as to the sufficiency of the applicant's qualifications, it will so notify him by registered mail, whereupon he may request a hearing for the purpose of showing his qualifications. If he presents to the Board no request for such hearing within 20 days after receiving the notification above referred to, his application shall be acted upon without further notice.

§ 201.29 Suspension or disbarment. The Board may, in its discretion, deny admission to, suspend, or disbar any person from practice before the Board who it finds does not possess the requisite qualifications to represent others or is lacking in character, integrity, or proper professional conduct. Any person who has been admitted to practice before the Board may be disbarred from such practice only after he is afforded an opportunity to be heard.

§ 201.30 Statement of interest. The Board, in its discretion, may call upon any practitioner for a full statement of the nature and extent of his interest in the subject matter presented by him before the Board. Attorneys retained on

a contingent fee basis shall file with the Board a copy of the contract of employment. Practitioners subject to section 807 of Merchant Marine Act, 1936, as amended, shall comply fully with the requirements of the Board's General Order 9 (2 F. R. 1240).

§ 201.31 *Former employees*—(a) *Practice prohibited.* No person shall practice, appear, or represent anyone before the Board in any matter to which he, as member, officer, or employee of the Board, or as officer or employee of the United States, gave personal consideration or as to the facts of which he gained knowledge during and by reason of his Government service.

(b) *Further prohibitions with exceptions.* No former member of the Federal Maritime Board shall practice, appear, or represent anyone before the Board or act as the employee of an attorney or agent, in any matter which was pending before the Board during the period of his membership in the Board. No former officer or employee of the Board shall practice, appear, or represent anyone before the Board, or act as the employee of an attorney or agent, within two years after the termination of his service with the Board, in any matter which was pending before the Board during the period of his employment by the Board, unless he shall first obtain the written consent of the Board. This consent will not be granted unless it appears that the applicant did not, as officer or employee of the United States, give personal consideration to the matter, to handle which consent is sought, or gain knowledge of the facts of said matter during and by reason of his Government service.

(c) *Former employees; affidavit.* Such applicant shall be required to file an affidavit to the effect that he gave no personal consideration to such matter; that he gained no knowledge of the facts involved in such matter during and by reason of his Government service; that he is not associated with, and will not in such matter be associated with, any former member, officer, or employee of the Board who has gained knowledge of the matter during and by reason of his Government service; and that his employment is not prohibited by any law of the United States or by the regulations of the Board. The statements contained in such affidavit shall not be sufficient if disproved by an examination of the files and records of the case.

(d) *Former employees; applications for consent.* Applications for consent should be directed to the Board; should state the former connection with the Board of the applicant, and should identify the matter in which the applicant desires to appear. The applicant shall be promptly advised as to his privilege to appear in the particular matter, and the application, affidavit, and consent, or refusal to consent, shall be filed by the Board in its records relative thereto. Separate consents to appear must be obtained to appear in separate cases.

(e) *Assistance to or by former employees.* No one entitled to practice before the Board shall knowingly (1) assist a person employed by a client to repre-

sent him before the Board in connection with any matter to which such person as a member, officer, or employee of the Board or as an officer or employee of the United States, gave personal consideration or as to the facts of which such person gained personal knowledge during and by reason of his Government service, or (2) accept assistance from any such person in connection with any such matter, or (3) share fees with any such person in connection with such matter.

SUBPART C—PARTIES

§ 201.41 *Parties; how designated.* The term "party", whenever used in this part, shall include any natural person, corporation, association, firm, partnership, trustee, receiver, agency, public or private organization, or governmental agency. A party who seeks relief or other affirmative action under § 201.62 and/or § 201.68 shall be designated as "complainant". A party against whom relief or other affirmative action is sought in any proceeding commenced under §§ 201.62, 201.67, or 201.68, shall be designated as "respondent". A party applying for charter, subsidy, or other government aid shall be designated as "applicant". A party who petitions to intervene under § 201.74 shall be designated as "intervener". A party who files a petition under §§ 201.51, 201.69, or 201.70, or a petition seeking relief not otherwise designated in this part shall be designated as "petitioner". No person other than a party as designated in this section may introduce evidence or examine witnesses at hearings.

§ 201.42 *Counsel for the Board.* The Assistant General Counsel for Litigation shall be a party to all proceedings governed by the rules in this part. The Assistant General Counsel or his representative shall be designated as "Counsel for the Board", and shall be served with copies of all papers, pleadings, and documents as are all other parties to the same proceeding. Counsel for the Board shall actively participate in any proceeding to the extent that he deems required in the public interest. Except in the case of rule making proceedings, no member of the staff of the General Counsel who acts as Counsel for the Board in a particular case shall participate or advise in the decision, recommended decision, or agency review of that case or a factually related case, except as witness or counsel in public proceedings. Members of the Board's staff other than those acting as Counsel for the Board may assist in the decision or agency review of any case or proceeding.

§ 201.43 *Substitution of parties.* Upon petition and for good cause shown, the Board may order a substitution of parties except that in case of death of a party substitution may be ordered upon suggestion and without the filing of a petition.

SUBPART D—RULE MAKING

§ 201.51 *Petition for issuance, amendment, or repeal of rule.* Any interested party may file with the Board a petition for the issuance, amendment, or repeal of a rule designed to implement, interpret, or prescribe law, pol-

icy, organization, procedure, or practice requirements of the Board. The petition shall set forth the interest of petitioner and the nature of the relief desired, shall include any facts, views, arguments, and data deemed relevant by petitioner, and shall be verified. If such petition is for the amendment or repeal of a rule, it shall be accompanied by proof of service on all persons, if any, specifically named in such rule, and shall conform in other aspects to Subpart H of this part. Replies to such petition shall conform to the requirements of § 201.76.

§ 201.52 *Notice of proposed rule making.* General notice of proposed rule making, including the information specified in § 201.143, shall be published in the FEDERAL REGISTER, unless all persons subject thereto are named and either are personally served or otherwise have actual notice thereof in accordance with law. Except where notice of hearing is required by statute, this section shall not apply to interpretative rules, general statements of policy, organization rules, procedure, or practice of the Board, or any situation in which the Board for good cause finds (and incorporates such finding in such rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

§ 201.53 *Participation in rule making.* Interested persons will be afforded an opportunity to participate in rule making through submission of written data, views, or arguments, with or without opportunity to present the same orally in any manner: *Provided,* That, where the proposed rules are such as are required by statute to be made on the record after opportunity for a hearing, such hearing shall be conducted pursuant to section 7 of the Administrative Procedure Act, and the procedure shall be the same as stated in Subpart J of this part. In those proceedings in which respondents are named, interested persons who wish to participate therein shall file a petition to intervene in accordance with the provisions of § 201.74.

§ 201.54 *Contents of rules.* The Board will incorporate in any rules adopted a concise general statement of their basis and purpose.

§ 201.55 *Effective date of rules.* The publication or service of any substantive rule shall be made not less than 30 days prior to its effective date except (a) as otherwise provided by the Board for good cause found and published in the FEDERAL REGISTER or (b) in the case of rules granting or recognizing exemption or relieving restriction, interpretative rules, and statement of policy.

SUBPART E—PROCEEDINGS; PLEADINGS; MOTIONS; REPLIES

§ 201.61 *Proceedings.* Proceedings are commenced by filing a complaint with the Board, by order to show cause, by order of investigation upon protest against rates, agreements, etc., by order of the Board upon petition or upon its own motion, or by the filing of an application for government aid, or other re-

lief, the processing of which necessitates a statutory hearing.

§ 201.62 *Complaints.* Relief or other affirmative action sought under section 22 of the Shipping Act, 1916, as amended, shall be set forth in a complaint filed with the Board. The complaint shall contain the name and address of each complainant, the name and address of complainant's attorney or agent, the name and address of each carrier or person against whom complaint is made, a concise statement of the cause of action, and a request for the relief or other affirmative action sought. Where reparation is sought and the nature of the proceeding so requires, the complaint shall set forth the ports of origin and destination of the shipments, consignees, or real parties in interest where shipments are on "order" bill of lading, consignors, date of receipt by carrier or tender of delivery to carrier, names of vessels, bill of lading number (other identifying reference), description of commodities, weights, measurement, rates, charges made or collected, when, where, by whom and to whom rates and charges were paid, by whom the rates and charges were borne, the amount of damage, and the relief sought. Except under unusual circumstances and for good cause shown, reparation will not be awarded upon a complaint in which it is not specifically asked for, nor upon a new complaint by or for the same complainant which is based upon a finding in the original proceeding. Wherever a rate, fare, charge, rule, regulation, classification, or practice is involved, appropriate reference to the tariff should be made, if possible. If complaint fails to indicate the sections of the acts alleged to have been violated or clearly to state facts which support the allegations, the Board may, on its own initiative, require the complaint to be amended to supply such further particulars as it deems necessary. The complaint shall be signed and sworn to by complainant, or by an officer or duly accredited representative of complainant if it is an association or a corporation, or by an authorized agent or attorney. When a complaint is filed by several complainants, one may sign on behalf of all. When the complaint is signed and sworn to by an agent or attorney, it shall be accompanied by a copy of the power of attorney or other authority of such agent or attorney to prosecute the complaint. A form of complaint is set forth in Appendix II (1). The complaint should designate the place at which hearing is desired.

§ 201.63 *Reparation, statute of limitations.* Complaints seeking reparation shall be filed within two (2) years after the cause of action accrues (section 22, Shipping Act, 1916, as amended). The Board will consider as in substantial compliance with the statute of limitations a complaint in which complainant alleges that the matters complained of, if continued in the future, will constitute violations of the shipping acts in the particulars and to the extent indicated and prays for reparation accordingly on all shipments affected thereby which may move during the pendency of the proceeding and on which the transporta-

tion charges shall be paid and borne by complainant. Notification to the Board that a complaint may or will be filed for the recovery of reparation will not constitute a filing within the 2-year period.

§ 201.64 *Joinder of actions and parties.* Two or more complaints which state similar causes of action against the same respondent or respondents and involve substantially the same issues may be consolidated and heard together. If a complaint relates to through transportation by continuous carriage or transshipment, all carriers participating in such through transportation shall be joined as respondents. If the complaint relates to more than one carrier or other person subject to the shipping acts, all carriers or other persons against whom a rule or order is sought shall be made respondents. If complaint is made with respect to an agreement filed with the Board under section 15 of the Shipping Act, 1916, as amended, or against a conference organized under said section, the carriers who are parties to such agreement or members of such conference shall be made respondents.

§ 21.65 *Answer to complaint.* Respondent shall file with the Board an answer to the complaint and shall serve it on complainant within fifteen (15) days after the date of service of the complaint by the Board or within thirty (30) days if such respondent resides in Alaska or beyond Continental United States, unless such periods have been extended by the Board, or unless motion is filed to withdraw or dismiss the complaint, in which latter case provision for answer, if necessary, will be made by order of the Board. Such answer shall give notice of issues controverted in fact or law. Recitals of material and relevant facts in a complaint, amended complaint, or bill of particulars, unless specifically denied in the answer thereto, shall constitute evidence, but if request is seasonably made, a competent witness shall be made available for cross-examination on such evidence. The answer shall be signed and verified by respondent, or by an officer or accredited representative of respondent if it is an association or corporation, or by an authorized agent or attorney. Where the answer is made on behalf of several respondents, one may sign on behalf of all. In the event that respondent should fail to file and serve the answer within the time provided, the Board may enter such rule or order as may be just, or may in any case require such proof as to the matters alleged in the complaint as it may deem proper: *Provided*, That the Board or Hearing Examiners' Office may permit the filing of a delayed answer after the time for filing the answer has expired, for good cause shown; or if motion to dismiss has been filed.

§ 201.66 *Replies to answers not permitted.* Replies to answers will not be permitted. New matter set forth in respondent's answer will be deemed to be controverted.

§ 201.67 *Order to show cause.* The Board may institute a proceeding against a person subject to its jurisdiction by order to show cause. The order shall be

served upon all persons named therein, shall include the information specified in § 201.143, may require the person named therein to answer, and shall require such person to appear at a specified time and place and present evidence upon the matters specified.

§ 201.68 *Proceedings under section 3 of the Intercoastal Act.* Protests against proposed changes in tariffs, invoking the provisions of section 3 of the Intercoastal Shipping Act, 1933, may be made by letter, telegram, or radiogram, and shall be filed with the Chief, Regulation Office, not later than ten (10) days prior to the proposed effective date of the change unless the Board permits the filing of the change in less than ten (10) days prior to the proposed effective date thereof, pursuant to the provisions of section 2 of the Intercoastal Act. Every protest shall clearly identify the tariff in question, give specific reference to the items opposed, set forth the grounds for opposition to the change, including a reference to the section or sections of the shipping acts alleged to be violated, shall be subscribed and verified, and shall be served upon each carrier whose tariff is protested or the issuing agent. Protests sent by telegraph or radio shall be confirmed promptly by letter signed by the person making the protest or by someone in his behalf. Replies thereto shall conform to the requirements of § 201.76.

§ 201.69 *Declaratory orders.* The Board may issue a declaratory order to terminate a controversy or to remove uncertainty. Petitions for the issuance thereof shall state clearly and concisely the controversy or uncertainty, shall cite the statutory and authority involved, shall include a complete statement of the facts and grounds prompting the petition, together with full disclosure of petitioner's interest, and shall conform to the requirements of Subpart H of this part. Replies thereto shall conform to the requirements of § 201.76.

§ 201.70 *Petitions; general.* All claims for relief or other affirmative action by the Board, except as otherwise provided in this part, shall be by written petition subscribed and verified, which shall state clearly and concisely the petitioner's grounds of interest in the subject matter, the facts relied upon and the relief sought, shall cite by appropriate reference the statutory provision or other authority relied upon for relief, shall be served upon all parties named therein, and shall conform otherwise to the requirements of Subpart H of this part. Replies thereto shall conform to the requirements of § 201.76.

§ 201.71 *Applications for government aid.* Applications for operating differential subsidies, charter of government-owned vessels, and other types of government aid shall conform to the requirements set forth in the various general orders and other rules of the Board specifically provided therefor. These rules of procedure shall apply where a statutory hearing is required in connection with such applications.

§ 201.72 *Amendments or supplements to pleadings.* Amendments or supplements to any pleading will be allowed or

refused in the discretion of the Board if the case has not been assigned for hearing, otherwise in the discretion of the officer designated to conduct the hearing: *Provided*, That after a case is assigned for hearing no amendment shall be allowed which would broaden the issues, without opportunity to reply to such amended pleading and to prepare for the broadened issues. The presiding officer may direct a party to state his case more fully and in more detail by way of amendment. If a response to an amended pleading is necessary, it may be filed and served in conformity with the requirements of § 201.76 unless the Board or the presiding officer directs otherwise. Amendments or supplements allowed prior to hearing will be served in the same manner as the original pleading. Whenever by this part a pleading is required to be verified, the amendment or supplement shall also be verified.

§ 201.73 *Bill of particulars*. Within ten (10) days after date of service of the complaint, respondent may file with the Board for service upon complainant a request for a bill of particulars. Within ten (10) days after date of service of such request, complainant shall file with the Board and serve upon respondent either (a) the bill of particulars requested or (b) a reply to such request, made in conformity with the requirements of § 201.76, setting forth the particular matters contained in the request which are objected to and the reasons for the objections. The time for filing answer to the complaint shall be extended to a date ten (10) days after the date of service of the bill of particulars or of notice of the Board's disallowance of the request therefor. For good cause shown, request for a bill of particulars also may be filed after answer is made and within a reasonable time prior to hearing.

§ 201.74 *Petition for intervention*. A petition for leave to intervene may be filed in any proceeding before the Board. The petition will be granted if the proposed intervenor shows in his petition a substantial interest in the proceeding and the grounds for intervention are pertinent to the issues already presented and do not unduly broaden them, but if filed after hearing has been closed it will not be granted ordinarily. If a petition filed prior to the hearing is granted, copies will be served by the Board as provided by § 201.113. When tendered at the hearing, sufficient copies shall be provided for distribution as motion papers to the parties represented at the hearing, together with additional copies for the use of the Board. When the petition is filed subsequent to the hearing, service shall be made on all parties to the proceeding as provided by § 201.114, and reply may be made thereto in conformity with § 201.76. The petition shall set forth the grounds of the proposed intervention and the interest and position of the petitioner in the proceeding shall comply with the other applicable provisions of Subpart H of this part, and if affirmative relief is sought, the applicable provisions of § 201.62. A person

granted permission to intervene becomes a party, pursuant to Subpart C of this part, and may introduce evidence or examine witnesses at any hearing which may be held in the proceeding.

§ 201.75 *Motions*. All motions and requests for rulings by the Board or the presiding officer shall state clearly and concisely the purpose of and the relief sought by the motion, the statutory or principal authority relied upon, and the facts claimed to constitute the grounds requiring the relief requested. If made before or after the hearing, such motion shall be in writing and shall conform to the requirements of subpart H. If made at the hearing, such motion may be stated orally and shall be made a part of the transcript: *Provided*, That the presiding officer may require that such motion be reduced to writing and filed and served in the same manner as written motions. Replies to written motions shall comply with the requirements of § 201.76. Motions and replies thereto shall be addressed to the presiding officer if the case is pending before such officer: *Provided*, That motions to dismiss or otherwise terminate the proceeding, and replies thereto, shall be addressed to the Board. Oral argument upon a written motion will be granted within the discretion of the Board or the presiding officer as the case may be.

§ 201.76 *Replies to pleadings, motions, applications, etc.* (a) A reply to a reply is not permitted. Except as otherwise provided respecting answers (§ 201.65), shortened procedure (Subpart K of this part), briefs (§ 201.221), exceptions (§ 201.229), and the documents specified in the paragraph (b) of this section, an adverse party may file a reply to any written motion, pleading, application, etc., permitted under these rules within ten (10) days after date of service thereof. A shorter period than ten (10) days may be allowed for the filing of such reply where the circumstances warrant.

(b) When time permits, replies also may be filed to protests seeking suspension of tariffs (§ 201.68), applications for subpoenas duces tecum (§ 201.131), applications for enlargement of time and postponement of hearing (Subpart G of this part), and motions to take depositions (§ 201.201).

(c) Replies shall be in writing, shall be verified if verification of original pleading is required, shall be so drawn as fully and completely to advise the parties and the Board as to the nature of the defense shall admit or deny specifically and in detail each material allegation of the pleading answered, shall state clearly and concisely the facts and matters of law relied upon, and shall conform to the requirements of Subpart H of this part.

SUBPART F—SETTLEMENT; PREHEARING PROCEDURE

§ 201.91 *Opportunity for informal settlement*. Where time, the nature of the proceeding, and the public interest permit, all interested parties shall have the opportunity for the submission and consideration of facts, argument, offers

of settlement, or proposal of adjustment, without prejudice to the rights of the parties; no stipulation, offer, or proposal shall be admissible in evidence over the objection of any party in any hearing on the matter. When any settlement does not dispose of the whole proceeding, the remaining issues shall be determined in accordance with sections 7 and 8 of the Administrative Procedure Act.

§ 201.92 *Voluntary payment of reparation*. Carriers or other persons subject to the shipping acts may file applications for the voluntary payment of reparation or for permission to waive collection of undercharges, even though no complaint has been filed pursuant to § 201.62. All such applications shall be made in accordance with the form prescribed in Appendix II (5) herein, shall describe in detail the transaction out of which the claim for reparation arose, and shall be filed within the 2-year statutory period referred to in § 201.63. Such applications will be considered the equivalent of a complaint and answer thereto admitting the facts complained of. If allowed, an order for payment will be issued by the Board.

§ 201.93 *Satisfaction of complaint*. If a respondent satisfies a complaint either before its answer thereto is due or after answering, a statement to that effect, setting forth when and how the complaint has been satisfied and signed and verified by the opposing parties, shall be filed with the Board and served upon all parties of record. Such a statement may be by letter. Satisfied complaints will be dismissed in the discretion of the Board.

§ 201.94 *Prehearing conference*. (a) Prior to any hearing the Board or presiding officer may direct all interested parties, by written notice, to attend a prehearing conference for the purpose of considering any settlement under § 201.91, formulating the issues in the proceeding and to determine other matters to aid in its disposition. In addition to any offers of settlement or proposals of adjustment, there may be considered the following:

- (1) Simplification of the issues;
- (2) The necessity or desirability of amendments to the pleadings;
- (3) The possibility of obtaining admission of fact and of documents which will avoid unnecessary proof;
- (4) Limitations on the number of witnesses;
- (5) The procedure at the hearing;
- (6) The distribution to the parties prior to the hearing of written testimony and exhibits;
- (7) Consolidation of the examination of witnesses by counsel;
- (8) Time and place of hearing; and
- (9) Such other matters as may aid in the disposition of the proceeding.

The officer conducting the conference may require, prior to the hearing, exchange of exhibits and any other material which may expedite same.

The notice of hearing will recite the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties concerning any of the matters consid-

ered. This notice, when entered, will limit the issues to be heard at the hearing to those not disposed of by admissions or agreements of counsel, and will control the subsequent course of the proceeding unless modified at the hearing to prevent manifest injustice.

(b) In any proceeding under this part, the presiding officer may, in his discretion, call the parties together for a conference prior to the taking of testimony, or may recess the hearing for such a conference, with a view to carrying out the purpose of this section. The presiding officer shall state on the record the results of such conference.

SUBPART G—TIME

§ 201.101 *Computation.* In computing any period of time under this part, except § 201.63, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or a national legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or such holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and holidays shall be excluded from the computation.

§ 201.102 *Additional time to file documents.* Parties in the States of Washington, Oregon, and California, parties in Alaska, and parties who reside beyond continental United States, and their agents or attorneys, are allowed five (5) additional days for filing documents. This section, however, shall not apply where a limitation of time is fixed by statute, or by notice enlarging time, or by §§ 201.163, 201.222, 201.230 and 201.264.

§ 201.103 *Enlargement of time to file documents.* Applicants for enlargement of time for the filing of any pleading or other document shall set forth the reasons for the application. Such applications may be granted upon a showing of diligence and good cause on the part of applicant, except where the time for compliance has been fixed by statute. Such applications shall conform to the requirements of Subpart H of this part, except as to service if they show that the parties have received actual notice of the application; and in relation to briefs, exceptions, and replies to exceptions—such applications shall conform to the further provisions of §§ 201.222 and 201.230. Upon motion made after the expiration of the specified period, the filing may be permitted to be done where reasonable grounds are found for the failure to file. Replies to such applications shall conform to the requirements of § 201.76.

§ 201.104 *Postponement of hearing.* Applications for postponement of any hearing date shall set forth the reasons for the application, and shall conform to the requirements of Subpart H of this part, except as to service if they show that parties have received actual notice of the application. Such applications may be granted upon a showing of diligence and good cause on the part of the applicant. Replies to such applications

shall conform to the requirements of § 201.76.

SUBPART H—FORM, EXECUTION, AND SERVICE OF DOCUMENTS

§ 201.111 *Form and appearance of documents filed with Board.* All papers to be filed under this part may be reproduced by printing or by any other process provided the copies are clear and legible; shall be dated, (the original) signed in ink, show the docket description and title of the proceeding, and show the title, if any, and address of the signer. If typewritten, the impression shall be on only one side of the paper and shall be double spaced, except that quotations shall be single spaced and indented. Documents not printed, except correspondence and exhibits, should be on strong, durable paper and shall be not more than 8½ inches wide and 12 inches long, with a left hand margin 1½ inches wide. Printed documents shall be printed in clear type (never smaller than small pica or 11-point type) adequately leaded, and the paper shall be opaque and unglazed. Documents of more than twenty (20) typewritten pages, except exhibits, shall be printed unless permission is secured to reproduce them by other method. Briefs if printed, shall be printed on paper 6½ inches wide and 9¼ inches long, with inside margin not less than 1 inch wide, and shall contain a subject index with page references and a list of authorities cited.

§ 201.112 *Subscription and verification of documents.* (a) Pleadings and other documents filed, except complaints and petitions for intervention subject to §§ 201.62 and 201.74, respectively, shall be subscribed: (1) By the person or persons filing same, (2) by an officer thereof if it be a corporation or association, (3) by an officer or employee if it be a government instrumentality, or (4) by an attorney or other person having authority with respect thereto.

(b) Verification shall be made under oath of any facts alleged in the document filed, by the person filing, an officer, or an attorney or other person having authority with respect thereto. The form of verification set forth in Appendix II (1), suitably modified, should be used.

§ 201.113 *Service by the Board.* Complaints filed pursuant to § 201.62, amendments to complaints, petitions to intervene granted prior to hearing, requests for bills of particulars, and complainant's memoranda filed in shortened procedure cases will be served by the Board. In addition to and accompanying the original of every document filed with the Board for service by the Board, there shall be a sufficient number of copies for use of the Board (see § 201.117) and for service on each party to the proceeding.

§ 201.114 *Service by parties.* Answers, briefs, exceptions, written motions, applications, requests for depositions, petitions, replies, requests for findings by Board counsel, stipulations, protests, bills of particulars, and all other papers in proceedings before the

Board under this part, except pleadings served by the Board under § 201.113, shall, when tendered to the Board or to the presiding officer for filing, show that service has been made upon all parties to the proceedings. Such service shall be made by delivering one copy to each party in person or by mailing by first-class mail properly addressed with postage prepaid. When a party has appeared by attorney or other representative, service upon such attorney or other representative will be deemed service upon the party. All documents served by mail shall be mailed in sufficient time to reach the parties on the date on which the original is due to be filed with the Board.

§ 201.115 *Date of service.* The date of service of documents served by the Board shall be the date shown in the service stamp thereon. The date of service of documents served by parties shall be the day when the matter served is deposited in the United States mail, or is delivered in person, as the case may be. In computing the time from such dates, the provisions of § 201.101 shall apply.

§ 201.116 *Certificate of service.* The original of every document filed with the Board and required to be served upon all parties to a proceeding shall be accompanied by a certificate of service signed by the party making service, stating that such service has been made upon each party to the proceeding. Certificates of service may be in substantially the following form:

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing via first-class mail, postage prepaid (or by delivering in person), a copy to each such party in sufficient time to reach such party on the date said document is due to be filed with the Board.

Dated at _____ this _____ day of _____ 19____.
(Signature) _____
For _____

§ 201.117 *Copies of documents for use of the Board.* Except as otherwise provided in this part, the original and fifteen (15) copies of every document filed and served in proceedings before the Board, except exhibits made a part of the record, shall be furnished for the Board's use.

SUBPART I—SUBPENAS

§ 201.131 *Applications; issuance.* Subpenas to require attendance of witnesses and subpenas duces tecum will be issued to parties upon request and reasonable showing, by the presiding officer before or at the hearing. Applications for subpenas duces tecum shall be in writing, shall set forth the relevancy and materiality of the facts which the applicant expects to prove, shall describe in detail and with reasonable certainty the books, papers, documents, or other records to be produced, and shall conform to the requirements of Subpart H of this part. Replies to such application shall conform to the requirements of § 201.76.

§ 201.132 *Attendance and mileage fees.* Persons attending hearings under

requirement of subpoenas are entitled to the same fees and mileage as in the courts of the United States, to be paid by the party at whose instance the persons are called.

§ 201.133 *Service of subpoenas.* If service of subpoena is made by a United States marshal or his deputy, such service shall be evidenced by his return thereon. If made by any other person such person shall make affidavit thereto, describing the manner in which service is made, and return such affidavit on or with the original subpoena. In case of failure to make service, the reasons for the failure shall be stated on the original subpoena. In making service the original subpoena shall be exhibited to the person served, shall be read to him if he is unable to read, and a copy thereof shall be left with him. The original subpoena, bearing or accompanied by required return, affidavit, or statement, shall be returned without delay to the Board, or if so directed on the subpoena, to the presiding officer before whom the person named in the subpoena is required to appear.

SUBPART J—HEARINGS; PRESIDING OFFICERS; EVIDENCE

§ 201.141 *Hearings not required by statute.* The Board may call informal public hearings, not required by statute, to be conducted under these rules where applicable, for the purpose of rule making or to obtain information necessary or helpful in the determination of its policies or the carrying out of its duties, and may require the attendance of witnesses and the production of evidence.

§ 201.142 *Hearings required by statute.* In complaint and answer cases, investigations on the Board's own motion, and in other rule-making and adjudication proceedings in which a hearing is required by statute, formal hearings shall be conducted pursuant to section 7 of the Administrative Procedure Act. Proceedings involving common questions of law and fact may be consolidated for hearing.

§ 201.143 *Notice of nature of hearing, jurisdiction, and issues.* Persons entitled to notice of hearings, except those notified by complaint served under § 201.113, will be duly and timely informed of (a) the nature of the proceeding, (b) the legal authority and jurisdiction under which the proceeding is conducted, and (c) the terms, substance, and issues involved, or the matters of fact and law asserted, as the case may be. Such notice shall be published in the FEDERAL REGISTER unless all persons subject thereto are named and either are personally served or otherwise have actual notice thereof in accordance with law.

§ 201.144 *Notice of time and place of hearing.* Notice of hearing will designate the time and place thereof and the person or persons who will preside. The date or place of a hearing for which notice has been issued may be changed when warranted. Reasonable notice will be given to the parties or their representatives of the time and place or the change thereof, due regard being

had for the public interest and the convenience and necessity of the parties or their representatives. Notice may be served by mail or telegraph.

§ 201.145 *Presiding officer.* The examiners of the Board's Hearing Examiners' Office will be designated to preside at hearings required by statute, in rotation so far as practicable, unless the Board or one or more members thereof shall preside; and also at hearings not required by statute when designated to do so by the Board.

§ 201.146 *Commencement of functions of Hearing Examiners' Office.* In proceedings handled by the Hearing Examiners' Office, its functions shall attach upon (a) the filing of a formal complaint, or (b) upon the institution of a proceeding and ordering of hearing by the Board.

§ 201.147 *Authority of presiding officer.* The officer designated to hear a case shall have authority to arrange and give notice of hearings; sign and issue subpoenas authorized by law; take or cause depositions to be taken; rule upon proposed amendments or supplements to pleadings; hold conferences for the settlement or simplification of issues by consent of the parties; regulate the course of the hearing; prescribe the order in which evidence shall be presented; dispose of procedural requests or similar matters; hear and rule upon motions, other than motions to dismiss, which may be granted only by the Board; administer oaths and affirmations; examine witnesses; direct witnesses to testify or produce evidence available to them which will aid in the determination of any question of fact in issue; rule upon offers of proof and admit competent evidence; act upon petitions to intervene and upon appearances by non-interveners; permit submission of facts, argument, offers of settlement, and proposals of adjustment; hear oral argument at the close of testimony; fix the time for filing briefs, motions, and other documents to be filed in connection with hearings and the examiner's decision thereon, except as otherwise provided by these rules; act upon petitions for enlargement of time to file such documents, including answers to formal complaints and exceptions to examiner's decisions and replies thereto; and dispose of any other matter that normally and properly arises in the course of proceedings. Disrespectful, disorderly, or contumacious language or conduct at any hearing shall be grounds for exclusion of the person guilty thereof from such hearing and for summary suspension for the duration of the hearing by the Board or the presiding officer.

§ 201.148 *Postponement or change of place by presiding officer.* If, in the judgment of the presiding officer, convenience or necessity so requires, he may postpone the time or change the place of hearing.

§ 201.149 *Disqualification of presiding or participating officer.* Any presiding or participating officer may at any time withdraw if he deems himself disqualified, in which case there will be

designated another presiding or participating officer. If a party to a proceeding, or his representative, files in good faith a timely and sufficient affidavit of personal bias or disqualification of a presiding or participating officer, the Board will determine the matter as a part of the record and decision in the case.

§ 201.150 *Further evidence required by presiding officer during hearing.* At any time during the hearing the presiding officer may call for further evidence upon any issue, and require such evidence where available to be presented by the party or parties concerned, either at the hearing or adjournment thereof. If a witness refuses to testify or produce the evidence as requested, the presiding officer shall report such refusal to the Board forthwith.

§ 201.151 *Exceptions to rulings of presiding officer unnecessary.* Formal exceptions to rulings of the presiding officer are unnecessary. It is sufficient that a party, at the time the ruling of the presiding officer is made or sought, makes known the action which he desires the presiding officer to take or his objection to an action taken, and his grounds therefor.

§ 201.152 *Offer of proof.* An offer of proof made in connection with an objection taken to any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

§ 201.153 *Appeal from ruling of presiding officer.* Rulings of presiding officers may not be appealed prior to, or during the course of, the hearing except in extraordinary circumstances where prompt decision by the Board is necessary to prevent unusual delay, expense, or detriment to the public interest, in which instances the matter shall be referred forthwith by the presiding officer to the Board for determination.

§ 201.154 *Rights of parties as to presentation of evidence.* Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

§ 201.155 *Burden of proof.* At any hearing in a suspension proceeding under section 3 of the Intercoastal Shipping Act, 1933, as amended (§ 201.68), the burden of proof to show that the suspended rate, fare, charge, classification, regulation, or practice is just and reasonable shall be upon the respondent carrier or carriers. In all other cases, the burden shall be on the proponent of the rule or order.

§ 201.156 *Evidence admissible.* In any proceeding under these rules, all

evidence which is relevant and material and not unduly repetitious or cumulative shall be admissible. Irrelevant and immaterial or unduly repetitious or cumulative evidence shall be excluded.

§ 201.157 *Written evidence.* (a) The reading of previously prepared statements into the record by a witness or the examination of a witness by means of written questions and answers should not be resorted to except where necessary to secure a clear presentation of complicated facts. Any portion of such testimony which is argumentative shall be excluded. Where it is intended to use previously prepared statements or written questions and answers, copies shall be furnished to all parties at the hearing at the time the witness testifies, unless the presiding officer directs otherwise; (b) where a formal hearing is held in a rule-making proceeding, interested persons will be afforded an opportunity to participate through submission of competent written evidence properly verified: *Provided*, That such evidence submitted by persons not present at the hearing will not be made a part of the record if objected to by any party on the ground that the person who submits the evidence is not present for cross-examination.

§ 201.158 *Documents containing matter not material.* Where written matter offered in evidence is embraced in a document containing other matter which is not intended to be offered in evidence, the party offering shall present the original document to all parties at the hearing for their inspection, and shall offer a true copy of the matter which is to be introduced unless the presiding officer determines that the matter is short enough to be read into the record. Opposing parties shall be afforded an opportunity to introduce in evidence, in like manner, other portions of the original document which are material and relevant.

§ 201.159 *Copies of exhibits.* One copy of each exhibit shall be furnished to each of the parties present at the hearing and to the presiding officer unless he directs otherwise.

§ 201.160 *Records in other proceedings.* When any portion of the record before the Board in any proceeding other than the one being heard is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless the parties represented at the hearing stipulate upon the record that such portion may be incorporated by reference.

§ 201.161 *Board's files.* Where any matter contained in a tariff, report, or other document on file with the Board is offered in evidence, such document need not be produced or marked for identification, but the matter so offered shall be specified in its particularity, giving tariff number and page number or tariff, report or document in such manner as to be readily identified, and may be received in evidence by reference, subject to comparison with the original document on file.

§ 201.162 *Stipulations.* The parties may, by stipulation in writing filed at the prehearing conference or by written or oral stipulation presented at the hearing or by written stipulation subsequent to the hearing, agree upon any facts involved in the proceeding and include them in the record with the consent of the presiding officer. It is desirable that facts be thus agreed upon whenever practicable. Written stipulations shall be subscribed and served upon all parties of record.

§ 201.163 *Receipt of documents after hearing.* Documents or other writings to be submitted for the record after the close of the hearing will not be received in evidence except upon agreement of all parties and with the permission of the presiding officer. Such documents or other writings when submitted shall be accompanied by proof that copies have been served upon all parties, and shall be received not later than ten (10) days after the close of the hearing except for good cause shown, and not less than ten (10) days prior to the date set for filing briefs. Exhibit numbers will not be assigned until such documents are actually received and incorporated in the record. In computing the time within which to file such documents or other writings, the five additional days provided in § 201.102 shall not apply. Documents or other writings submitted contrary to the provisions of this rule will be returned to the sender.

§ 201.164 *Oral argument at hearings.* A request for oral argument at the close of testimony will be granted or denied by the presiding officer in his discretion.

§ 201.165 *Official transcript.* The Board will designate the official reporter for all hearings. The official transcript of testimony taken, together with any exhibits and any briefs or memoranda of law filed therewith, shall be filed with the Board. Transcripts of testimony will be available in any proceeding under this part, and will be supplied by the official reporter to the parties and to the public, except when required for good cause to be held confidential, at rates not to exceed the maximum rates fixed by contract between the Board and the reporter.

§ 201.166 *Corrections of transcript.* Motions made at the hearing to correct the record will be acted upon by the presiding officer. Motions made after the hearing to correct the record shall be filed with the presiding officer within ten (10) days after receipt of the transcript, unless otherwise directed by the presiding officer, and shall be served on all parties. Such motions may be in the form of a letter and shall certify the date when the transcript was received. If no objections are received within ten (10) days after date of service, the transcript will, upon approval of the presiding officer, be changed to reflect such corrections. If objections are received, the motion will be acted upon with due consideration of the stenographic record of the hearing.

§ 201.167 *Objection to public disclosure of information.* Upon objection to

public disclosure of any information sought to be elicited during a hearing, the witness shall disclose such information only in the presence of the presiding officer, official reporter, and such attorneys or representatives of each party as the presiding officer shall designate, and after all present have been sworn to secrecy. The transcript of testimony shall be held confidential. Within five (5) days after such testimony is given, the objecting party shall file with the presiding officer a verified written motion to withhold such information from public disclosure, setting forth sufficient identification of same and the basis upon which public disclosure should not be made. Copies of said transcript and motion need not be served upon any other party unless so ordered by the presiding officer.

§ 201.168 *Copies of data or evidence.* Every persons compelled to submit data or evidence shall be entitled to retain or, on payment of proper costs, procure a copy of transcript thereof.

§ 201.169 *Record for decision.* The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding shall constitute the exclusive record for decision.

SUBPART K—SHORTENED PROCEDURE

§ 201.181 *Selection of cases for shortened procedure; consent required.* By consent of the parties and with approval of the Board by notice, a complaint proceeding may be conducted under shortened procedure without oral hearing: *Provided*, That a hearing may be ordered at the request of any party prior to initial or recommended decision or upon the Board's motion at any stage of the proceeding.

§ 201.182 *Complainant's Memorandum of facts and argument.* Each complainant shall submit to the Board within fifteen (15) days after date of service of notice by the Board a memorandum of the facts, subscribed and verified according to § 201.112, and of arguments separately stated, upon which it relies. The original of each memorandum shall be accompanied by sufficient copies for service upon each party and for the Board's use.

§ 201.183 *Respondent's answering memorandum.* Within twenty-five (25) days after date of service of complainant's memorandum, each respondent shall serve upon the complainant an answering memorandum of the facts, subscribed and verified according to § 201.112, and of argument, separately stated, upon which it relies. The original of the answering memorandum shall be accompanied by a certificate of service as provided in Subpart H and shall be accompanied by copies for the Board's use.

§ 201.184 *Complainant's memorandum in reply.* Within fifteen (15) days after the date of service of the answering memorandum, each complainant may serve a memorandum in reply upon each respondent, subscribed, verified and served as provided in Subpart H of this part, and shall be accompanied by copies

for the Board's use. This will conclude presentation of the evidence unless otherwise determined by the Board.

§ 201.185 *Service of memoranda upon and by interveners.* Service of all memoranda shall be made upon any interveners. Intervenors shall file and serve memoranda in conformity with the provisions relating to the parties on whose behalf they intervene.

§ 201.186 *Contents of memoranda.* The memorandum should contain concise arguments and fact, the same as would be offered if a formal hearing were held and briefs filed. If reparation is sought, paid freight bills should accompany complainant's original memorandum.

§ 201.187 *Procedure after filing of memoranda.* An initial, recommended, or tentative decision will be served upon the parties in the same manner as is provided under § 201.226. Thereafter, the procedure will be the same as that in respect to proceedings after formal hearing.

SUBPART L—DEPOSITIONS

§ 201.201 *Request for orders to take; time of filing; contents.* The Board may, either on its own initiative, pursuant to a prehearing conference or otherwise, or upon proper request of a party to a proceeding, issue an order to take a deposition. A motion to take a deposition shall be filed with the Board not less than fifteen (15) days before the proposed date for taking the deposition, and shall set forth the reason for the deposition, the place and time of taking, the officer before whom it is to be taken, the name and address of each witness to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and whether the deposition is to be based upon written interrogatories or upon oral examination. If the deposition is to be based upon oral examination, the motion shall contain a statement of the matters concerning which each witness will testify. If the deposition is to be based upon written interrogatories, the motion shall be accompanied by the interrogatories to be propounded, serially numbered. Copies of all motions to take depositions, and accompanying interrogatories, in any, shall conform to the requirements of Subpart H of this part. Objection to the taking of such deposition may be made in a reply to such motion, which shall conform to the requirements of § 201.76. Without prejudice to objection to such motion, the reply may also state objection to any individual interrogatory, and if the deposition is permitted, the Board will rule upon such objections to interrogatories. A party served with an order to take a deposition on written interrogatories shall have ten (10) days after date of service of such order within which to file and serve written cross-interrogatories, which shall be served pursuant to Subpart H of this part. Upon the issuance of an order by the Board for the taking of a deposition, the Secretary will mail a copy thereof to all parties, and the

party who requested the deposition shall transmit a copy of such order to the officer taking the deposition. An application to take a deposition in a foreign country will be entertained when necessary or convenient, and authority to take such deposition will be granted upon such notice and other terms and directions as are lawful and appropriate.

§ 201.202 *Contents of order.* The order issued authorizing the taking of a deposition will state the name and address of each witness or a general description sufficient to identify him or the particular class or group to which he belongs, the matters concerning which it is expected such witness will testify, the place where, the time when, and the officer before whom the deposition is to be taken. If the deposition is to be taken upon written interrogatories, a list of the interrogatories will accompany the order.

§ 201.203 *Record of examination; oath; objections.* The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically, shall be translated to English pursuant to § 201.7 if necessary, and shall be transcribed unless the parties agree otherwise. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objections to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. Any party served with a notice to take an oral deposition may cross-examine a witness whose testimony is taken under such deposition. In lieu of cross-examination, parties served with notice of taking a deposition may transmit written interrogatories or cross-interrogatories to the officer taking the deposition, who shall propound them to the witness and record the answers verbatim together with any objections interposed thereto by adverse parties.

§ 201.204 *Submission to witness; changes; signing.* When the testimony is fully transcribed the deposition of each witness shall be submitted to him for examination and shall be read to or by him. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign, together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless upon objection the presiding officer holds that the reasons given for

the refusal to sign require rejection of the deposition in whole or in part.

§ 201.205 *Certification and filing by officer; copies.* The officer taking the deposition shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness, and that said officer is not of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)," and shall promptly send the original and two copies thereof, together with the original and two copies of all exhibits, by registered mail to the Board. Interested parties shall make their own arrangements with the officer taking the deposition for copies of the testimony and the exhibits.

§ 201.206 *Waiver of objections and admissibility.* Objections to the form of question and answer shall be made before the officer taking the depositions by parties or representatives present, and if not so made, shall be deemed waived. Depositions shall, when offered at the hearing, be subject to proper legal objection.

§ 201.207 *Time of filing.* All depositions shall be filed with the Board not later than the date of the hearing in which they are to be offered as evidence.

§ 201.208 *Inclusion in record.* No deposition shall constitute a part of the record in any proceeding until received in evidence.

§ 201.209 *Witness fees; expenses of taking depositions.* Witnesses whose depositions are taken pursuant to these rules, and the officer taking such depositions, shall severally be entitled to the same fees and mileage as are paid for like service in the courts of the United States. All expenses of taking such depositions shall be paid by the party at whose instance the deposition is taken.

§ 201.210 *Depositions taken or authorized by presiding officer.* The presiding officer may also take or authorize depositions to be taken, and in such event this part shall govern in so far as applicable unless the proper course of the proceeding requires otherwise, in which case he shall prescribe the procedure to be followed.

SUBPART M—BRIEFS; REQUESTS FOR FINDINGS; DECISIONS; EXEMPTIONS

§ 201.221 *Briefs; requests for findings.* The presiding officer shall fix the time for filing briefs and any enlargement thereof. The period of time allowed, subject to the provisions of § 201.102, shall be the same for all parties unless the presiding officer, for good cause shown, directs otherwise. The parties may not file more than one brief except in unusual cases. Briefs shall be served upon all parties pursuant to Subpart H of this part. In investigations instituted on the Board's own motion, the presiding officer may require the attorney for the Board to file a request for findings of fact and conclusions

within a reasonable time prior to the filing of briefs. Service of the request shall be in accordance with the provisions of Subpart H of this part. In addition to the ordinary summary of evidence, with reference to exhibit numbers and pages of the transcript, and statements of law with appropriate citations of the authorities relied upon, the brief shall contain proposed findings of fact and conclusions in serially numbered paragraphs.

§ 201.222 *Requests for enlargement of time for filing briefs.* Requests for enlargement of time within which to file briefs shall conform to the requirements of § 201.103. Except for good cause shown, such requests shall be filed and served not later than eight (8) days before the expiration of the time fixed for the filing of the briefs. In computing the time within which to file such request, the five additional days provided in § 201.102 shall not apply.

§ 201.223 *Reopening of case by presiding officer prior to decision.* At any time prior to the filing of his decision, the presiding officer, either upon petition or within his discretion, may, for good cause and upon reasonable notice, reopen the case for the reception of further evidence.

§ 201.224 *Decisions; authority to make and kinds.* To the examiners of the Hearing Examiners' Office is delegated the authority to make and serve initial or recommended decisions. The notice of hearing or order of investigation shall prescribe the kind of decision to be issued. The same officers who preside at the reception of evidence pursuant to section 7 of the Administrative Procedure Act shall make the initial or recommended decision except where such officers become unavailable to the Board, in which case another officer will be designated to make such decision. Where the Board requires the entire record in the case to be certified to it for initial decision, the presiding or other officer shall first recommend a decision except that in rule making or determining applications for initial licenses (a) in lieu thereof the Board may issue a tentative decision or any of its responsible officers may recommend a decision or (b) any such procedure may be omitted in any case in which the Board finds upon the record that due and timely execution of its functions imperatively and unavoidably so requires. When an initial decision becomes a decision of the Board in the absence of Board review, the Secretary will issue and serve upon the parties of record notice of the date such decision becomes effective as a Board decision or order.

§ 201.225 *Separation of functions.* The separation of functions as required by section 5 (c) of the Administrative Procedure Act shall be observed in proceedings under this part.

§ 201.226 *Decisions; contents and service.* All initial, recommended, tentative, and final decisions will include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law,

or discretion presented on the record, and the appropriate rule, order, sanction, relief, or denial thereof. A copy of each decision when issued shall be served on the parties to the proceeding, and furnished to interested persons upon request.

§ 201.227 *Decision based on official notice.* Official notice may be taken of such matters as might be judicially noticed by the courts, or of technical or scientific facts within the general knowledge of the Board as an expert body: *Provided*, That where a decision or part thereof rests on the official notice of a material fact not appearing in the evidence in the record, the fact of official notice shall be so stated in the decision, and any party, on timely request, shall be afforded an opportunity to show the contrary.

§ 201.228 *Exceptions to, and review by Board of, decisions.* Within fifteen (15) days after date of service of the initial, recommended, or tentative decision, any party may file a memorandum excepting to any conclusions, findings, or statements contained in such decision, and a brief in support of such memorandum. Such exceptions and brief shall constitute one document, shall indicate with particularity alleged errors, shall indicate page of the transcript and exhibit number when referring to the record, and shall be served on all parties pursuant to Subpart H of this part. In the absence of ascertained error or exceptions, a recommended or tentative decision will be taken by the Board as the basis of its decision. Whenever the officer who presided at the reception of the evidence, or other qualified officer, makes an initial decision, and in the absence of the filing of exceptions thereto or notice of review thereof by the Board, such decision by the officer, without further proceedings, shall become the decision of the Board. Upon the filing of exceptions to, or review of, an initial decision, such decision shall become inoperative until the Board determines the matter. Where exceptions are filed to, or the Board reviews, an initial decision, the Board, except as it may limit the issues upon notice or by rule, will have all the powers which it would have in making the initial decision. Whenever the Board shall determine to review an initial decision on its own initiative, notice of such intention shall be served upon the parties within thirty (30) days after date of service of the initial decision.

§ 201.229 *Replies to exceptions.* An adverse party may file and serve a reply to exceptions within fifteen (15) days after date of service thereof. Such reply shall indicate page of the transcript and exhibit numbers when referring to the record.

§ 201.230 *Request for enlargement of time for filing exceptions and replies thereto.* Requests for enlargement of time within which to file exceptions, and briefs in support thereof, or replies to exceptions shall conform to the applicable provisions of § 201.103. Except for good cause shown, such requests shall

be filed and served not later than eight (8) days before the expiration of the time fixed for the filing of such documents. In computing the time within which to file such request, the five (5) additional days provided in § 201.102 shall not apply.

§ 201.231 *Certification of record by presiding or other officer.* The presiding or other officer shall certify and transmit the entire record to the Board when (a) exceptions are filed or the time therefor has expired, (b) notice is given by the Board that the initial decision will be reviewed on its own initiative, or (c) the Board requires the case to be certified to it for initial decision.

SUBPART N—ORAL ARGUMENT; SUBMITTAL FOR FINAL DECISION

§ 201.241 *Oral argument.* If oral argument before the Board is desired or exceptions to an initial, recommended, or tentative decision, or on a motion, petition, or application, a request therefor shall be made in writing. Any party may make such request irrespective of his filing exceptions under § 201.228. If a brief on exceptions is filed, the request for oral argument shall be incorporated in such brief. Requests for oral argument on any motion, petition, or application shall be made in the motion, petition, or application, or in the reply thereto. Applications for oral argument will be granted or denied in the discretion of the Board, and, if granted, the notice of oral argument will set forth the order of presentation. Upon request, the Board will notify any party of the amount of time which will be allowed him. Those who appear before the Board for oral argument should confine their argument to points of controlling importance. Where the facts of a case are adequately and accurately dealt with in the initial, recommended, or tentative decision, parties should, as far as possible, address themselves in argument to the conclusions. Effort should be made by parties to take the same position to agree in advance of the argument upon those who are to present their side of the case, and the names of such persons and the amount of time requested should be received by the Board not later than ten (10) days before the date set for the argument. The fewer the number of persons making the argument the more effectively can the parties' interests be presented in the time allotted.

§ 201.242 *Submittal to Board for final decision.* A proceeding will be deemed submitted to the Board for final decision as follows: (a) If oral argument is had, the date of completion thereof, or if memoranda on points of law are permitted to be filed after argument, the last date of such filing; (b) if oral argument is not had, the last date when exceptions or replies thereto are filed, or if exceptions are not filed, the expiration date for such exceptions; (c) in the case of an initial decision, the date of notice of the Board to review the decision, if such notice is given.

SUBPART O—REPARATION

§ 201.251 *Proof on award of reparation.* If many shipments or points of

origin or destination are involved in a proceeding in which reparation is sought, the Board will determine in its decision the issues as to violations, injury to complainant, and right to reparation. If complainant is found entitled to reparation, the parties thereafter will be given an opportunity to agree or make proof respecting the shipments and pecuniary amount of reparation due before the order of the Board awarding reparation is entered. In such cases, freight bills and other exhibits bearing on the details of all shipments, and the amount of reparation on each, need not be produced at the original hearing unless called for or needed to develop other pertinent facts.

§ 201.252 Reparation statements. When the Board finds that reparation is due, but that the amount cannot be ascertained upon the record before it, the complainant shall immediately prepare a statement in accordance with the approved reparation statement in Appendix II (4), showing details of the shipments on which reparation is claimed. This statement shall not include any shipments not covered by the findings of the Board. Complainant shall forward the statement, together with the paid freight bills on the shipments, or true copies thereof, to the carrier or other person who collected the charges for checking and certification as to accuracy. Statements so prepared and certified shall be filed with the Board for consideration in determining the amount of reparation due. Disputes concerning the accuracy of amounts may be assigned for conference by the Board, or in its discretion referred for further hearing.

SUBPART P—REOPENING OF PROCEEDINGS

§ 201.261 Reopening by Board and modification, or setting aside of report or order. Upon petition or its own motion, the Board may at any time after reasonable notice, reopen any proceeding under these rules for rehearing, reargument or reconsideration and, after opportunity for hearing, may alter, modify, or set aside in whole or in part its report of findings or order therein if it finds such action is required by changed conditions in fact or law or by the public interest.

§ 201.262 Petition for reopening. A petition for reopening for the purpose of reargument, reconsideration, or to take further evidence shall be made in writing, shall state the grounds relied upon, and shall conform to the requirement of Subpart H of this part. If the petition be to take further evidence, the nature and purpose of the new evidence to be adduced shall be briefly stated, and it shall appear that such evidence was not available at the time of the prior hearing. If the petition be for reargument or reconsideration, the matter claimed to have been erroneously decided shall be specified and the alleged errors briefly stated. In case of unforeseen emergency, satisfactorily shown by the petitioner, request for modification of rules or orders may be made by telegram or otherwise, upon notice to all parties or attorneys of record, but such request

shall be followed by a petition filed and served in accordance with Subpart H of this part.

§ 201.263 Stay of rule or order. No petition for reopening or allowance thereof, except by special order of the Board shall operate as a stay of any rule or order entered by the Board, except that pending judicial review, and where it finds that justice so requires, the Board may postpone the effective date of any action taken by it.

§ 201.264 Time for filing petition to reopen. Except for good cause shown, and upon leave granted, petition to reopen under § 201.262 shall be filed with the Board within thirty (30) days after the date of service of the Board's final decision or order in the proceeding.

§ 201.265 Reply to petition to reopen. Replies to petitions filed pursuant to § 201.262 shall conform to the requirements of § 201.76.

SUBPART Q—JUDICIAL REVIEW

§ 201.271 Appeal from initial decision necessary before judicial review. Any party not satisfied with the initial decision of a hearing officer shall appeal same to the Board, by filing exceptions thereto, before such decision may be regarded as final for the purposes of judicial review. In the event of such appeal, the initial decision meanwhile shall be inoperative.

APPENDIX I—SCHEDULE OF INFORMATION FOR PRESENTATION IN REGULATORY CASES

The following schedule lists items of information which are pertinent in cases submitted to the Board pursuant to the regulatory provisions of the Shipping Acts. The list is not intended to be inclusive, nor does it indicate all of the evidence which may be pertinent in specific cases:

1. Identity of complainant; if an individual, complainant's residence; if a partnership, names of partners, business and principal place thereof; if a corporation, name, state of incorporation, and principal place of business. The same information with respect to respondents, interveners, or others who become parties is necessary.
2. Description of commodity involved, with port of origin, destination port, weight, consignor and consignee of shipment, or shipments date shipped from loading port, and date received at discharging port.
3. Rate charged, with tariff authority for same, and any rule or regulation applicable thereto; the charges collected and from whom.
4. Route of shipment, including any transshipment; bill of lading reference.
5. Date of delivery or tender of delivery of each shipment.
6. Where the rate is challenged and comparisons are made with rates on other commodities, the form, packing, density, susceptibility to damage, liability to contaminate other freight, value, volume of movement, competitive situation, and all matters relating to the cost of loading, unloading, and otherwise handling of the respective commodities.
7. If comparisons are made between the challenged rates and rates on other routes, the evidence showing similarity of service should include at least respective distances, volumes of movement, cost of handling, and competitive conditions.
8. History of rate with reasons for previous increases or decreases of same.
9. When the complaint alleges unjust discrimination or undue prejudice or preference

is alleged, the evidence should indicate what manner of discrimination, undue prejudice or preference is involved, whether the shipper, locality, particular description of traffic, or ports or exporters of the United States as compared with their foreign competitors; how the preference or discrimination resulted and the manner in which the carrier or carriers complained of are responsible for the same; how complainant is damaged by the prejudice or discrimination, in loss of sales or otherwise; and care should be exercised to differentiate between the measure of proof of damages required in cases where prejudice or discrimination is charged and where the unreasonableness of rates is charged.

10. Where the disapproval of an agreement filed pursuant to section 15 is sought, facts under which the provisions of that section are invoked must be specifically shown; if the reason for disapproval is that the agreement violates the other provisions of the Shipping Act, 1916, or results in discriminations, the evidence to sustain the charge should be as detailed and complete as would be necessary to prove a similar charge where no agreement is involved; if the reason for disapproval is that the agreement is detrimental to the commerce of the United States, the specific commerce, manner in which it is affected, and the extent of the detriment should be shown.

APPENDIX II—APPROVED FORMS

The following forms may be used where applicable, with such alterations as the circumstances may require:

NO. 1—COMPLAINT REQUESTING RELIEF OR OTHER AFFIRMATIVE ACTION BY THE BOARD UNDER THE PROVISIONS OF THE SHIPPING ACTS, AS AMENDED

BEFORE THE FEDERAL MARITIME BOARD

COMPLAINT

v.
The ----- Steamship Company

(Insert without abbreviation exact and complete name of party or parties respondent.)

I. The complainant is (state in this paragraph whether complainant is an association, a corporation, firm, or partnership, and if a firm or partnership, the names of the individuals composing the same. State also the nature and principal place of business).

II. The respondent above named is (a common carrier by water engaged in transportation between ----- and -----; or carries on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water), and as such is subject to the provisions of the Shipping Act, 1916, as amended.

III. That (state in this and subsequent paragraphs to be lettered A, B, etc., the matter or matters complained of. If rates are involved name each rate, fare, charge, classification, regulation, or practice the lawfulness of which is challenged).

IV. That by reason of the facts stated in the foregoing paragraphs complainant has been subjected to the payment of rates (fares, or charges, etc.) for transportation (or services) which were when exacted and still are (1) in violation of section 14 of the Shipping Act, 1916; (2) unduly or unreasonably preferential, prejudicial, or disadvantageous in violation of section 16; (3) unjustly discriminatory or prejudicial in violation of section 17; and (4) unjust and unreasonable in violation of section 18); or

V. That the agreement, modification or cancellation is unjustly discriminatory or unfair as between carriers, etc. (as provided in section 15).

rection has been achieved.) -----

The undersigned carrier(s) hereby admits that when exacted the freight charges collected were unlawful in violation of section(s) ----- of the Shipping Act, 1916, as amended.

Respectfully submitted.

(Respondent)

By -----

(Title)

(Date)

This application is concurred in by: -----

By -----

(Title)

State of -----

County of ----- ss:

I, -----, on oath depose and say that I am ----- of the within-named applicant, on whose behalf I make this affidavit; that I have read the foregoing application and know the contents thereof; and that the same is true.

Subscribed and sworn to before me, a notary public in and for the State of -----, county of -----, this ----- day of -----, A. D. 19-----

[SEAL]

Notary Public.

My Commission expires -----

Certificate of Complainant

I hereby certify that charges of \$----- on the shipments involved herein were paid and borne as such by ----- Company, and by no other.

(Complainant)

By -----

(Title)

Subscribed and sworn to before me, a notary public in and for the State of -----, county of -----, this ----- day of -----, A. D. 19-----

[SEAL]

Notary Public.

My Commission expires -----

Where the application is for authority to refund to the consignee when the papers show that the charges were paid by the consignor, or vice versa, or where the complainant is neither the consignor nor consignee, the Board requires that a stipulation be submitted with the application, signed by the consignor, by the consignee, and by an executive or general officer of the carrier in substantially the following form:

Title. (Here insert names of complainant and respondent(s) as in application to which stipulation relates.)

The undersigned -----, the consignor of the following described shipment (here insert date, commodity, and points of origin and destination) and the consignee thereof, and the undersigned ----- (name of carrier), stipulate and agree that any order entered in the above-entitled informal complaint for a refund on account of the excessive freight charges collected on said shipment shall be in favor of ----- (here insert name

of consignor or consignee, as the case may be).

[SEAL]

(Signature of consignor)

(Signature of consignee)

(Signature of carrier)

APPENDIX III—APPLICATION FOR ADMISSION TO PRACTICE BEFORE THE FEDERAL MARITIME BOARD AND THE MARITIME ADMINISTRATION

(All questions must be fully answered)

I hereby apply for admission to practice before the Federal Maritime Board and the Maritime Administration, hereinafter referred to collectively as the "Board", under the rules for the registration of persons entitled to practice before the Board and submit the following:

1. Name -----

(Last name)

(First name)

(Middle name or initial)

2. Business address -----

3. Residence address -----

4. Are you a citizen of the United States? -----

5. Date of birth -----

6. Place of birth -----

7. Present occupation -----

8. Occupation and employment during the last 5 years -----

9. Have you been admitted to practice before any other department, bureau, or commission of the United States Government? If so, state details. -----

10. Have you ever been denied admission to practice, or disbarred or suspended from practice before any court, department, bureau, or commission of any State or the United States? If so, explain fully. -----

11. Describe fully what steps you have taken to familiarize yourself with (1) the provisions of the Merchant Marine Act, 1936, Shipping Act, 1916, and kindred acts; (2) the decisions of the courts, and of the Board and its predecessors, with respect to matters now under the jurisdiction of the Board; and (3) your experience, if any, in conducting cases before regulatory commissions, State or Federal: -----

12. State any additional facts relied upon to show that you are possessed of the necessary qualifications to render valuable services and competent to advise and assist persons in proceedings before the Board: -----

13. In connection with what branch of the Board's activities do you intend to practice? Please specify: -----

14. Do you intend to engage in general practice before the Board, or only for a company of which you are an officer or regular employee? -----

15. (a) Have you ever been an officer or employee of the United States? -----

(b) If so, state the branch of service, with dates of appointment to and separation from service, together with reason for separation: -----

(c) Have you ever been employed by the Board? -----

(d) If so, state date of separation from service, together with reason for separation: -----

16. Give the names and business addresses of three persons, NOT relatives, who have knowledge of your experience, ability, and character. (Only one reference may be from a present business partner or associate.)

Full name	Business address	Business or occupation
1. -----	-----	-----
2. -----	-----	-----
3. -----	-----	-----

(Signature of applicant)

State of -----

County of ----- ss:

-----, being first duly sworn, on his oath deposes and says that he is the person named in the foregoing application for admission to practice before the Federal Maritime Board and the Maritime Administration, and that the statements of facts therein contained are true.

(Signature of applicant)

Subscribed in my presence, and sworn to before me, this ----- day of -----, 19-----

[SEAL]

Notary Public.

My commission expires -----

APPENDIX IV—FORM OF OATH TO BE EXECUTED BY APPLICANTS FOR ADMISSION TO PRACTICE BEFORE THE FEDERAL MARITIME BOARD AND THE MARITIME ADMINISTRATION

State of -----, ss:

I, -----, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will conduct myself according to law and the rules for the registration of persons entitled to practice before the Federal Maritime Board and the Maritime Administration; that my conduct will be upright, without misrepresentation by concealment or otherwise, and such, so far as in my power, as will justify the confidence reposed in me by the Board and its members and the Maritime Administration, and by parties whom I may at any time represent, and as will promote and maintain respect for the United States, the Board and the Maritime Administration, and those who are entitled to practice before the Board and the Maritime Administration.

(Signature)

Subscribed and sworn to before me this ----- day of -----, 19-----

[SEAL]

Notary Public.

My commission expires -----

[F. R. Doc. 53-5116; Filed, June 10, 1953; 8:56 a. m.]

NOTICES

DEPARTMENT OF THE TREASURY

Foreign Assets Control

IMPORTATION OF CERTAIN MERCHANDISE
DIRECTLY FROM TAIWAN (FORMOSA)AVAILABLE CERTIFICATIONS BY SPECIFIED
FOREIGN GOVERNMENTS

Notice is hereby given that certificates of origin issued by the Ministry of Economic Affairs of the Government of China under procedures agreed upon between that government and the Foreign Assets Control are now available with respect to the importation into the United States directly, or on a through bill of lading, from Taiwan (Formosa) with respect to the following additional commodities:

Bamboo shoots, canned.
Bamboo, split.
Ginger root, candied or otherwise preserved.
Hog bristles, black, not to exceed four inches in length.
Preserved olives.
Preserved plums.
Preserved prunes.

[SEAL]

ELTING ARNOLD,

Acting Director,

Foreign Assets Control.

[F. R. Doc. 53-5230; Filed, June 10, 1953;
9:49 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. DA-423]

IDAHO

RESTORATION ORDER UNDER FEDERAL POWER
ACT

JUNE 1, 1953.

Pursuant to determination DA-423, Idaho, of the Federal Power Commission and in accordance with Order No. 427, section 222 (a) (4) of the Director, Bureau of Land Management, approved August 16, 1950, 15 F. R. 5641, it is ordered as follows:

Subject to valid existing rights and the provisions of existing withdrawals, the lands hereinafter described so far as they are withdrawn and reserved for power purposes are hereby restored to disposition under the public land laws, subject to the provisions of Section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075; 16 U. S. C., Section 818), as amended.

IDAHO

T. 13 N., R. 19 E., B. M.,
Sec. 10, lot 5.

The area described aggregates 15.60 acres.

The land described is an isolated tract and consists mainly of gravel with some commingled sand and silt and is covered with sagebrush and supports some cheatgrass in season. The land is classified as grazing in character and is subject to disposal under the Public Sale Law.

While any application that is filed for the land will be considered on its merits, it is unlikely that any part of the restored land will be classified for any use or disposal other than that shown above. The land described shall be subject to application by the State of Idaho for a period of 90 days from the date of publication of this order in the Federal Register for right-of-way of public highways or as a source of materials for the construction and maintenance of such highways, subject to section 24 of the Federal Power Act, as amended. This order shall not otherwise affect the status of the land until 10:00 a. m. on the 91st day after publication of this order in the Federal Register. At that time the land shall become subject to application, petition, location, and selection, subject to valid existing rights, the provisions of existing withdrawals, the requirements of applicable laws, and a 90-day preference filing, period for veterans and others entitled to preference under the act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279-284), as amended.

Information showing periods during which and the conditions under which veterans and others may file application for these lands may be obtained on request from the Land and Survey Office, Boise, Idaho.

JAMES F. DOYLE,

Assistant Regional Administrator.

[F. R. Doc. 53-5153; Filed, June 10, 1953;
8:46 a. m.]

NEVADA

CLASSIFICATION ORDER

JUNE 5, 1953.

1. Pursuant to the authority delegated to me by the Regional Administrator, Region II, Bureau of Land Management, by Order No. 1, Amendment No. 2, dated January 29, 1953 (18 F. R. 23), I hereby classify under the Small Tract Act of June 1, 1938 (52 Stat. 609), as amended July 14, 1945 (59 Stat. 467, 43 U. S. C. 682a), as hereinafter indicated, the following described lands in the Nevada land district, embracing approximately 120 acres,

NEVADA SMALL TRACT CLASSIFICATION NO. 91

For lease and sale for homesite purposes only:

T. 21 S., R. 60 E., M. D. M.,
Sec. 13, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$.

The lands are located in the Las Vegas Valley about five miles southwest of the City of Las Vegas in Clark County, Nevada. Topography is adaptable to homesite development, and water for domestic purposes can probably be obtained from wells of moderate depth.

2. As to applications regularly filed prior to 10:00 a. m., January 17, 1952, and are for the type of site for which the lands are classified, this order shall become effective upon the date it is signed.

3. This order shall not otherwise become effective to change the status of

such lands until 10:00 a. m. on the 35th day after the date of this order. At that time the said lands shall, subject to valid existing rights and the provisions of existing withdrawals, become subject to applications under the Small Tract Act as follows:

(a) *Ninety-one day period for preference-right filings.* For a period of 91 days, commencing at the hour and on the day specified above, the public lands affected by this order shall be subject only to application under the Small Tract Act of June 1, 1938, 52 Stat. 609 (43 U. S. C. 682a), as amended, by qualified veterans of World War II, subject to the requirements of applicable law. All applications filed under this paragraph either at or before 10:00 a. m. on the 35th day after the date of this order shall be treated as though filed simultaneously at that time. All applications filed under this paragraph after 10:00 a. m. on the said 35th day shall be considered in the order of filing.

(b) *Date for non-preference-right filings.* Commencing at 10:00 a. m. on the 126th day after the date of this order, any lands remaining unappropriated shall become subject to disposal under the Small Tract Act only. All such applications filed either at or before 10:00 a. m. on the 126th day after the date of this order, shall be treated as though filed simultaneously at the hour specified on such 126th day. All applications filed thereafter shall be considered in the order of filing.

4. A veteran shall accompany his application with a complete photostatic, or other copy (both sides), of his certificate of honorable discharge, or of an official document of his branch of the service which shows clearly his honorable discharge as defined in § 181.36 of Title 43 of the Code of Federal Regulations, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service. Other persons claiming credit for service of veterans must furnish like proof in support of their claims. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their application by duly corroborated statements in support thereof, setting forth in detail all facts relevant to their claims.

5. All of the lands will be leased in tracts of approximately 330 feet by 330 feet, containing approximately 2½ acres, which form aliquot parts of the existing official survey.

6. Preference right leases referred to in paragraph 2 will be issued only if the lands described in the application conform to or is amended to conform to the area and dimensions specified in paragraph 5.

7. Leases will be for a period of three years at an annual rental of \$5.00 payable for the entire lease period in advance of the issuance of the lease. Leases will contain an option to purchase clause at the appraised value of \$125.00 per tract for tracts in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ section 13 and

\$175.00 per tract for tracts in the N $\frac{1}{2}$ NE $\frac{1}{4}$ section 13. Application to purchase may be filed during the term of the lease but not more than 30 days prior to the expiration of one year from the date of the lease issuance.

8. Tracts will be subject to all existing rights-of-way and to rights-of-way 33 feet in width along the boundaries thereof for road purposes and public utilities. Such rights-of-way may be utilized by the Federal Government, or the State, County or municipality in which the tract is situated, or by any agency thereof. The rights-of-way may, in the discretion of the authorized officer of the Bureau of Land Management, be definitely located prior to the issuance of the patent. If not so located, they may be subject to location after patent is issued.

9. All inquiries relating to these lands should be addressed to the Manager, Nevada Land and Survey Office, Reno, Nevada.

E. I. ROWLAND,
Regional Chief
Division of Lands.

[F. R. Doc. 53-5155; Filed, June 10, 1953;
8:46 a. m.]

Office of the Secretary

[Order No. 2723]

FISH AND WILDLIFE SERVICE

DESIGNATION OF ACTING DIRECTOR

JUNE 4, 1953.

SECTION 1. Succession. (a) Albert M. Day, Assistant to the Director, shall perform the duties of the Director, Fish and Wildlife Service, in the event of the absence, sickness, resignation or death of the Director.

(b) Clarence Cottam, Assistant to the Director, shall perform the duties of the Director, in the event of the absence, sickness, resignation or death of the Director and Albert M. Day.

(c) John L. Kask, Assistant to the Director, shall perform the duties of the Director in the event of the absence, sickness, resignation or death of the Director, Albert M. Day, and Clarence Cottam.

(d) The Chief, Division of Administration shall perform the duties of the Director in the event of the absence, sickness, resignation or death of the Director, Albert M. Day, Clarence Cottam, and John L. Kask.

Sec. 2. Title. The officer performing under authority of section 1 of this order shall sign documents under the title "Acting Director."

Sec. 3. Ratification. All actions taken by Albert M. Day as Acting Director prior to the date of this order are ratified.

Sec. 4. Revocation. Order No. 2697, dated July 17, 1952 (17 F. R. 6796) is hereby revoked.

(Reorg. Plan No. 3 of 1950, 16 F. R. 3174)

DOUGLAS MCKAY,
Secretary of the Interior.

[F. R. Doc. 53-5152; Filed, June 10, 1953;
8:45 a. m.]

No. 113—7

DEPARTMENT OF AGRICULTURE

Production and Marketing Administration

DIRECTOR, POULTRY BRANCH

DELEGATION OF AUTHORITY TO EXERCISE CERTAIN POWERS AND FUNCTIONS

Pursuant to the authority vested in the Administrator by the regulations (7 CFR Part 55) governing the sampling, grading, grade labeling, and supervision of packaging of eggs and egg products, authority is hereby delegated to the Director, Poultry Branch, Production and Marketing Administration, to exercise the powers and functions vested in the Administrator pursuant to §§ 55.1 to 55.61, §§ 55.101 to 55.103, inclusive, of said regulations, and to redelegate the authority granted herein to any officer or employee of the Production and Marketing Administration under his supervision.

Any action heretofore taken by the Director, Poultry Branch, with respect to the foregoing matters is hereby ratified and confirmed and shall remain in full force and effect unless and until expressly modified, amended, suspended, revoked, or terminated; and the delegation of authority to the Chief, Dairy and Poultry Inspection and Grading Division, Dairy Branch, Production and Marketing Administration, of July 28, 1948 (13 F. R. 4418) is hereby superseded.

Done at Washington, D. C., this 8th day of June 1953.

[SEAL] ROY W. LENNARTSON,
Assistant Administrator, Production and Marketing Administration.

[F. R. Doc. 53-5196; Filed, June 10, 1953;
8:56 a. m.]

FEDERAL POWER COMMISSION

[Docket Nos. G-1012, G-1319, G-1554, G-1558, G-1559, G-1560, G-1568, G-1576, G-1584, G-1655, G-1969, G-1921, G-1922, G-2077, G-2108]

ALGONQUIN GAS TRANSMISSION CO. ET AL. ORDER OMITTING INTERMEDIATE DECISION PROCEDURE AND SETTING DATE FOR FILING BRIEFS AND FOR ORAL ARGUMENT

In the matters of Algonquin Gas Transmission Company, Docket No. G-1319; Northeastern Gas Transmission Company, Docket No. G-1568; Texas Eastern Transmission Corporation, Docket No. G-1012; Portland Gas Light Company, Docket No. G-1554; Biddeford and Saco Gas Company, Docket No. G-1558; Gas Service, Incorporated, Docket No. G-1559; Allied New Hampshire Gas Company, Docket No. G-1560; Greenfield Gas Light Company, Docket No. G-1576; Gardner Gas Fuel and Light Company, Docket No. G-1584; Athol Gas Company, Docket No. G-1655; Blackstone Valley Gas and Electric Company, Docket No. G-2077; Tennessee Gas Transmission Company and Niagara Gas Transmission Limited, Docket No. G-1921; Tennessee Gas Transmission Company, Docket Nos. G-1922, G-1969, and G-2108.

On May 13, 1953, during the course of hearings in these proceedings, counsel for Texas Eastern Transmission Corporation (Texas Eastern) and Algonquin Gas Transmission Company (Algonquin) moved orally that the Commission omit the intermediate decision procedure in these matters. All parties including staff counsel, but excepting counsel for the intervening coal and labor interests, concurred in this motion.

Counsel for Algonquin and Texas Eastern also moved that the Commission hear oral argument in the above matters not later than June 15, 1953, and that briefs be required to be filed by June 10, 1953. This part of the motion was based on the assumption that the consolidated hearings would be concluded on June 1, 1953, which has not proven to be the case. This motion also requested that, if staff counsel was unable to file a brief by June 10, 1953, a summary memorandum stating the position to be taken by the staff at oral argument be served on all parties of record two days prior to such argument. Counsel for the staff, for the coal and labor interests, and for intervenor Trans-Canada Pipe Lines, Limited, opposed this part of the motion respecting the fixing of such dates for filing briefs and for oral argument.

Hearings in the Matters of Algonquin's application at Docket No. G-1319 and Texas Eastern's application at Docket No. G-1012 were first held during 1950 and January 1951. By its Opinion No. 206 and accompanying order issued February 27, 1951, the Commission authorized Algonquin to serve certain markets in New England, and authorized Texas Eastern, among other things, to supply the natural-gas requirements of Algonquin. Pursuant to this authorization, Algonquin and Texas Eastern began construction of the facilities certificated. At the present time, Texas Eastern has completed its construction and Algonquin alleges it has invested approximately \$54,000,000 in the construction of its substantially completed project.

Northeastern Gas Transmission Company's (Northeastern) application at Docket No. G-1568 was dismissed in part by Commission order issued January 17, 1951. Northeastern and other parties petitioned the Commission for rehearing and eventually sought court review of this latter order and the order accompanying Opinion No. 206, among others. In Northeastern Gas Transmission Company et al. v. Federal Power Commission, 195 F. 2d 872 (C. A. 3, 1952), the United States Court of Appeals for the Third Circuit reversed the Commission's orders of January 17, 1951, and February 27, 1951, among others. The Supreme Court of the United States subsequently denied a petition for a writ of certiorari. The mandates of the Court of Appeals issued and were received by the Commission on October 23, 1952.

Promptly thereafter the Commission by order issued October 31, 1952, reopened the proceedings at Docket Nos. G-1012, G-1319 and G-1568, consolidated these and the other New England service applications, and set the consolidated dockets for hearing on November 24, 1952, which date was later changed to

November 25, 1952. Hearings commenced on the latter date and have been held almost continuously ever since.

By order issued February 10, 1953, the Commission consolidated for purposes of hearing the above-captioned applications at Docket Nos. G-1921, G-1922, and G-1969 and Tennessee Gas Transmission Company's application in Docket No. G-2108. Hearings in these consolidated matters were concluded on June 3, 1953.

In support of his motion, counsel for Texas Eastern and Algonquin alleged that Algonquin is currently incurring fixed charges and other expenses aggregating approximately \$200,000 per month without any off-setting revenues. Other concurring counsel alleges that gas-purchase contracts of Niagara Gas Transmission, Limited, a joint applicant at Docket No. G-1921, and of Iroquois Gas Corporation, an intervenor, may be terminated on July 1, 1953, unless such contracts are hereafter modified. The gas reserves proposed to be made available under such contracts is proposed to be transported for the account of the purchasers by Tennessee if its applications at Docket Nos. G-1921, G-1922, and G-1969 are granted.

The Commission finds:

(1) Due and timely execution of the Commission's functions imperatively and unavoidably require omission of the intermediate decision procedure in these proceedings.

(2) The dates proposed by counsel for Texas Eastern and Algonquin, concurred in by certain of the parties and opposed by others, do not appear to provide sufficient time for the preparation of adequate briefs and preparation for oral argument, considering the magnitude of the record and the number and complexity of the issues presented by the several applications in these proceedings. The dates for the filing of briefs herein and for oral argument before the Commission should be fixed as hereinafter ordered.

The Commission orders: (A) The motion of Algonquin and Texas Eastern and others for omission of the intermediate decision procedure be and it hereby is granted.

(B) The motion of Algonquin and Texas Eastern and others that June 10, 1953, be fixed as the date for filing briefs, and that oral argument be heard in these matters by the Commission on June 15, 1953, be and it hereby is denied.

(C) Briefs of all parties to the above dockets shall be filed with the Commission on or before July 3, 1953.

(D) Oral argument on the matters involved and the issues presented by the several applications in these proceedings be held in the Commission's Hearing Room, 441 G Street N.W., Washington, D. C., at 10:00 o'clock, a. m., e. d. t., on July 9, 1953.

(E) Each party to the above dockets desiring to participate in the oral argument hereinbefore ordered shall notify the Secretary of the Commission of the amount of time desired on or before June 29, 1953.

Adopted: June 4, 1953.

Issued: June 5, 1953.

By the Commission.

[SEAL]

LEON M. FUQUAY,
Secretary.

[F. R. Doc. 53-5157; Filed, June 10, 1953;
8:47 a. m.]

[Docket No. G-2052]

TENNESSEE GAS TRANSMISSION CO.

ORDER GRANTING MOTION FOR POSTPONEMENT OF HEARING

On June 3, 1953, Tennessee Gas Transmission Company (Tennessee) filed a motion to postpone until July 15, 1953, the hearing in the above-entitled proceeding which is now scheduled to commence on June 10, 1953.

Tennessee states as grounds for its motion that its counsel and many of its officers and personnel have been engaged, in another extensive proceeding before this Commission and that further time is necessary in order adequately to prepare this case for trial.

The instant proceeding involves a proposed rate increase of \$17,850,000 per year, which has been put into effect by Tennessee under bond pursuant to section 4 (e) of the Natural Gas Act, and which the Commission is required by the act to dispose of as speedily as possible.

Numerous requests have been received from parties to the proceeding for an early hearing. As early a disposition of this matter as is possible is particularly important in view of the fact that final disposition of proposed rate increases of at least eight other natural gas companies which purchase directly or indirectly from Tennessee depends upon the outcome of this proceeding.

The Commission finds: Good cause has been shown for the postponement of the hearing in the above-docketed proceeding, which is now scheduled to commence on June 10, 1953, until July 6, 1953.

The Commission orders: The hearing in the above-docketed proceeding, now scheduled to commence on June 10, 1953 be, and it hereby is postponed to commence on July 6, 1953 at 10:00 a. m., e. d. s. t., in the Commission's hearing room, 441 G Street N.W., Washington, D. C.

Adopted: June 5, 1953.

Issued: June 5, 1953.

By the Commission:

[SEAL]

LEON M. FUQUAY,
Secretary.

[F. R. Doc. 53-5156; Filed, June 10, 1953;
8:46 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. SA-279]

ACCIDENT OCCURRING AT LAMBERT FIELD,
ST. LOUIS, MO.

NOTICE OF HEARING

In the matter of investigation of accident involving aircraft of United States Registry N-53596 which occurred at Lambert Field, St. Louis, Missouri, on May 24, 1953.

Notice is hereby given, pursuant to the Civil Aeronautics Act of 1938, as amended, particularly section 702 of said act, in the above-entitled proceeding that hearing is hereby assigned to be held on June 16, 1953, at 9:00 a. m. (local time) in the Court of Appeals, United States Court House and Customs Building, 1114 Market Street, St. Louis, Missouri.

Dated at Washington, D. C., June 3, 1953.

[SEAL]

ALLEN P. BOURDON,
Presiding Officer.

[F. R. Doc. 53-5194; Filed, June 10, 1953;
8:56 a. m.]

SECURITIES AND EXCHANGE COMMISSION

JOHN J. CUNNINGHAM

ORDER FOR PROCEEDINGS AND NOTICE OF HEARING

In the matter of John J. Cunningham, 173 West 81st Street, New York, N. Y.

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 4th day of June 1953.

I. The Commission's public official files disclose that John J. Cunningham, hereinafter referred to as registrant, is registered as a broker-dealer pursuant to section 15 (b) of the Securities Exchange Act of 1934.

II. The Records Officer of the Commission has filed with the Commission a statement, a copy of which is attached hereto and made a part hereof,¹ stating that registrant did not file with the Commission reports of his financial condition during the calendar year 1952, as required by section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted thereunder.

III. The information reported to the Commission by its Records Officer as set forth in Paragraph II hereof tends, if true, to show that registrant violated section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted under said section.

IV. The Commission, having considered the aforesaid information, deems it necessary and appropriate in the public interest and for the protection of investors that proceedings be instituted to determine:

(a) Whether the statement referred to in Paragraph II hereof is true;

(b) Whether registrant has willfully violated section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted under said section;

(c) Whether, pursuant to section 15 (b) of the Securities Exchange Act of 1934, it is in the public interest to revoke registration of registrant; and

(d) Whether, pursuant to section 15 (b) of the Securities Exchange Act of 1934, pending final determination, it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration of registrant.

V. It is ordered, That registrant be given an opportunity for hearing as set forth in Paragraph IV hereof on the

¹ Filed as part of the original document.

1st day of July 1953, at the main office of the Securities and Exchange Commission, located at 425 Second Street NW., Washington 25, D. C., before a Hearing Examiner to be designated by the Commission. On such date the Hearing Room Clerk in Room 193, North Building, will advise the parties and the Hearing Examiner as to the room in which such hearing will be held. The Commission will consider any motion with respect to a change of place of said hearing if said motion is filed with the Secretary of the Commission on or before June 29, 1953. Upon completion of any such hearing in this matter the Hearing Examiner shall prepare a recommended decision pursuant to Rule IX of the rules of practice unless such decision is waived.

It is further ordered, That in the event registrant does not appear personally or through a representative at the time and place herein set or as otherwise ordered, the Hearing Room Clerk shall file with the Records Officer of the Commission a written statement to that effect and thereupon the Commission will take the record under advisement for decision.

This order and notice shall be served on registrant personally or by registered mail forthwith, and published in the FEDERAL REGISTER not later than fifteen (15) days prior to July 1, 1953.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon the matter except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of section 4 (c) of the Administrative Procedure Act, it is not deemed to be subject to the provisions of the section delaying the effective date of any final Commission action.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 53-5161; Filed, June 10, 1953;
8:48 a. m.]

MAX N. HAMMERLING

ORDER FOR PROCEEDINGS AND NOTICE OF HEARING

In the matter of Max N. Hammerling, 44 West 44th Street, New York, N. Y.

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 4th day of June 1953.

I. The Commission's public official files disclose that Max N. Hammerling, hereinafter referred to as registrant, is registered as a broker-dealer pursuant to section 15 (b) of the Securities Exchange Act of 1934.

II. The Records Officer of the Commission has filed with the Commission a statement, a copy of which is attached hereto and made a part hereof,¹ stating

that registrant did not file with the Commission reports of his financial condition during the calendar year 1952, as required by section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted thereunder.

III. The information reported to the Commission by its Records Officer as set forth in Paragraph II hereof tends, if true, to show that registrant violated section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted under said section.

IV. The Commission having considered the aforesaid information, deems it necessary and appropriate in the public interest and for the protection of investors that proceedings be instituted to determine:

(a) Whether the statement referred to in Paragraph II hereof is true;

(b) Whether registrant has wilfully violated section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted under said section;

(c) Whether, pursuant to section 15 (b) of the Securities Exchange Act of 1934, it is in the public interest to revoke registration of registrant; and

(d) Whether, pursuant to section 15 (b) of the Securities Exchange Act of 1934, pending final determination, it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration of registrant.

V. It is ordered, That registrant be given an opportunity for hearing as set forth in Paragraph IV hereof on the 1st day of July 1953, at the main office of the Securities and Exchange Commission, located at 425 Second Street NW., Washington, 25, D. C., before a Hearing Examiner to be designated by the Commission. On such date the Hearing Room Clerk in Room 193, North Building, will advise the parties and the Hearing Examiner as to the room in which such hearing will be held. The Commission will consider any motion with respect to a change of place of said hearing if said motion is filed with the Secretary of the Commission on or before June 29, 1953. Upon completion of any such hearing in this matter the Hearing Examiner shall prepare a recommended decision pursuant to Rule IX of the rules of practice unless such decision is waived.

It is further ordered, That in the event registrant does not appear personally or through a representative at the time and place herein set or as otherwise ordered, the Hearing Room Clerk shall file with the Records Officer of the Commission a written statement to that effect and thereupon the Commission will take the record under advisement for decision.

This order and notice shall be served on registrant personally or by registered mail forthwith, and published in the FEDERAL REGISTER not later than fifteen (15) days prior to July 1, 1953.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon the matter except as witness or counsel in

proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of section 4 (c) of the Administrative Procedure Act, it is not deemed to be subject to the provisions of the section delaying the effective date of any final Commission action.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 53-5160; Filed, June 10, 1953;
8:48 a. m.]

RAPHAEL CO.

ORDER FOR PROCEEDINGS AND NOTICE OF HEARING

In the matter of Raphael Hashinsky, d/b/a Raphael Company, 237 Nassau Avenue, Brooklyn 22, N. Y.

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 4th day of June 1953.

I. The Commission's public official files disclose that Raphael Company, herein-after referred to as registrant, is registered as a broker-dealer pursuant to section 15 (b) of the Securities Exchange Act of 1934.

II. The Records Officer of the Commission has filed with the Commission a statement, a copy of which is attached hereto and made a part hereof,¹ stating that registrant did not file with the Commission reports of his financial condition during the calendar year 1952, as required by section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted thereunder.

III. The information reported to the Commission by its Records Officer as set forth in Paragraph II hereof tends, if true, to show that registrant violated section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted under said section.

IV. The Commission, having considered the aforesaid information, deems it necessary and appropriate in the public interest and for the protection of investors that proceedings be instituted to determine:

(a) Whether the statement referred to in Paragraph II hereof is true;

(b) Whether registrant has wilfully violated section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted under said section;

(c) Whether, pursuant to section 15 (b) of the Securities Exchange Act of 1934, it is in the public interest to revoke registration of registrant; and

(d) Whether, pursuant to section 15 (b) of the Securities Exchange Act of 1934, pending final determination, it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration of registrant.

V. It is ordered, That registrant be given an opportunity for hearing as set forth in Paragraph IV hereof on the 1st day of July 1953, at the main office of the Securities and Exchange Commission, located at 425 Second Street NW., Washington 25, D. C., before a Hearing Examiner to be designated by the

¹ Filed as part of the original document.

Commission. On such date the Hearing Room Clerk in Room 193, North Building, will advise the parties and the Hearing Examiner as to the room in which such hearing will be held. The Commission will consider any motion with respect to a change of place of said hearing if said motion is filed with the Secretary of the Commission on or before June 29, 1953. Upon completion of any such hearing in this matter the Hearing Examiner shall prepare a recommended decision pursuant to Rule IX of the rules of practice unless such decision is waived:

It is further ordered, That in the event registrant does not appear personally or through a representative at the time and place herein set or as otherwise ordered, the Hearing Room Clerk shall file with the Records Officer of the Commission a written statement to that effect and thereupon the Commission will take the record under advisement for decision.

This order and notice shall be served on registrant personally or by registered mail forthwith, and published in the *FEDERAL REGISTER* not later than fifteen (15) days prior to July 1, 1953.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon the matter except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of section 4 (c) of the Administrative Procedure Act, it is not deemed to be subject to the provisions of the section delaying the effective date of any final Commission action.

By the Commission.

[SEAL]

ORVAL L. DuBois,
Secretary.

[F. R. Doc. 53-5162; Filed, June 10, 1953;
8:49 a. m.]

McDERMOTT AND CO.

ORDER FOR PROCEEDINGS AND NOTICE OF HEARING

In the matter of Frank Joseph McDermott, d/b/a McDermott and Company, 81 Montgomery Street, Jersey City 12, New Jersey.

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 4th day of June 1953.

I. The Commission's public official files disclose that McDermott and Company, hereinafter referred to as registrant, is registered as a broker-dealer pursuant to section 15 (b) of the Securities Exchange Act of 1934.

II. The Records Officer of the Commission has filed with the Commission a statement, a copy of which is attached hereto and made a part hereof, stating that registrant did not file with the Commission reports of his financial condition

during the calendar year 1952, as required by section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted thereunder.

III. The information reported to the Commission by its Records Officer as set forth in Paragraph II hereof tends, if true, to show that registrant violated section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted under said section.

IV. The Commission, having considered the aforesaid information, deems it necessary and appropriate in the public interest and for the protection of investors that proceedings be instituted to determine:

(a) Whether the statement referred to in Paragraph II hereof is true;

(b) Whether registrant has wilfully violated section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted under said section;

(c) Whether, pursuant to section 15 (b) of the Securities Exchange Act of 1934, it is in the public interest to revoke registration of registrant; and

(d) Whether, pursuant to section 15 (b) of the Securities Exchange Act of 1934, pending final determination, it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration of registrant.

V. *It is ordered,* That registrant be given an opportunity for hearing as set forth in Paragraph IV hereof on the 1st day of July 1953, at the main office of the Securities and Exchange Commission, located at 425 Second Street NW., Washington 25, D. C., before a Hearing Examiner to be designated by the Commission. On such date the Hearing Room Clerk in Room 193, North Building, will advise the parties and the Hearing Examiner as to the room in which such hearing will be held. The Commission will consider any motion with respect to a change of place of said hearing if said motion is filed with the Secretary of the Commission on or before June 29, 1953. Upon completion of any such hearing in this matter the Hearing Examiner shall prepare a recommended decision pursuant to Rule IX of the rules of practice unless such decision is waived:

It is further ordered, That in the event registrant does not appear personally or through a representative at the time and place herein set or as otherwise ordered, the Hearing Room Clerk shall file with the Records Officer of the Commission a written statement to that effect and thereupon the Commission will take the record under advisement for decision.

This order and notice shall be served on registrant personally or by registered mail forthwith, and published in the *FEDERAL REGISTER* not later than fifteen (15) days prior to July 1, 1953.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon the matter except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of section 4 (c) of the Ad-

ministrative Procedure Act, it is not deemed to be subject to the provisions of the section delaying the effective date of any final Commission action.

By the Commission.

[SEAL]

ORVAL L. DuBois,
Secretary.

[F. R. Doc. 53-5163; Filed, June 10, 1953;
8:49 a. m.]

ALVIN OAKSMITH STEWARD

ORDER FOR PROCEEDINGS AND NOTICE OF HEARING

In the matter of Alvin Oaksmith Steward, 63 Park Avenue, New York 16, N. Y.

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 4th day of June 1953.

I. The Commission's public official files disclose that Alvin Oaksmith Steward, hereinafter referred to as registrant, is registered as a broker-dealer pursuant to section 15 (b) of the Securities Exchange Act of 1934.

II. The Records Officer of the Commission has filed with the Commission a statement, a copy of which is attached hereto and made a part hereof, stating that registrant did not file with the Commission reports of his financial condition during the calendar year 1952, as required by section 17 (a) of the Securities Exchange Act of 1934, and Rule X-17A-5 adopted thereunder.

III. The information reported to the Commission by its Records Officer as set forth in Paragraph II hereof tends, if true, to show that registrant violated section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted under said section.

IV. The Commission, having considered the aforesaid information, deems it necessary and appropriate in the public interest and for the protection of investors that proceedings be instituted to determine:

(a) Whether the statement referred to in Paragraph II hereof is true;

(b) Whether registrant has wilfully violated section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted under said section;

(c) Whether, pursuant to section 15 (b) of the Securities Exchange Act of 1934, it is in the public interest to revoke registration of registrant; and

(d) Whether, pursuant to section 15 (b) of the Securities Exchange Act of 1934, pending final determination, it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration of registrant.

V. *It is ordered,* That registrant be given an opportunity for hearing as set forth in Paragraph IV hereof on the 1st day of July 1953, at the main office of the Securities and Exchange Commission, located at 425 Second Street NW., Washington 25, D. C., before a Hearing Examiner to be designated by the Commission. On such date the Hearing Room Clerk in Room 193, North Building, will advise the parties and the Hearing Examiner as to the room in

¹ Filed as part of the original document.

which such hearing will be held. The Commission will consider any motion with respect to a change of place of said hearing if said motion is filed with the Secretary of the Commission on or before June 29, 1953. Upon completion of any such hearing in this matter the Hearing Examiner shall prepare a recommended decision pursuant to Rule IX of the rules of practice unless such decision is waived:

It is further ordered, That in the event registrant does not appear personally or through a representative at the time and place herein set or as otherwise ordered, the Hearing Room Clerk shall file with the Records Officer of the Commission a written statement to that effect and thereupon the Commission will take the record under advisement for decision.

This order and notice shall be served on registrant personally or by registered mail forthwith, and published in the FEDERAL REGISTER not later than fifteen (15) days prior to July 1, 1953.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon the matter except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of section 4 (c) of the Administrative Procedure Act, it is not deemed to be subject to the provisions of the section delaying the effective date of any final Commission action.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 53-5164; Filed, June 10, 1953;
8:49 a. m.]

NEWTON O. TASSELL

ORDER FOR PROCEEDINGS AND NOTICE OF HEARING

In the matter of Newton O. Tassell, 215 Powers Building, Rochester, N. Y.

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 4th day of June 1953.

I. The Commission's public official files disclose that Newton O. Tassell, hereinafter referred to as registrant, is registered as a broker-dealer pursuant to section 15 (b) of the Securities Exchange Act of 1934.

II. The Records Officer of the Commission has filed with the Commission a statement, a copy of which is attached hereto and made a part hereof,¹ stating that registrant did not file with the Commission reports of his financial condition during the calendar year 1952, as required by section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted thereunder.

III. The information reported to the Commission by its Records Officer as set

forth in Paragraph II hereof tends, if true, to show that registrant violated section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted under said section.

IV. The Commission, having considered the aforesaid information, deems it necessary and appropriate in the public interest and for the protection of investors that proceedings be instituted to determine:

(a) Whether the statement referred to in Paragraph II hereof is true;

(b) Whether registrant has wilfully violated section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted under said section;

(c) Whether, pursuant to section 15 (b) of the Securities Exchange Act of 1934, it is in the public interest to revoke registration of registrant; and

(d) Whether, pursuant to section 15 (b) of the Securities Exchange Act of 1934, pending final determination, it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration of registrant.

V. *It is ordered*, That registrant be given an opportunity for hearing as set forth in Paragraph IV hereof on the 1st day of July 1953, at the main office of the Securities and Exchange Commission, located at 425 Second Street NW., Washington 25, D. C., before a Hearing Examiner to be designated by the Commission. On such date the Hearing Room Clerk in Room 193, North Building, will advise the parties and the Hearing Examiner as to the room in which such hearing will be held. The Commission will consider any motion with respect to a change of place of said hearing if said motion is filed with the Secretary of the Commission on or before June 29, 1953. Upon completion of any such hearing in this matter the Hearing Examiner shall prepare a recommended decision pursuant to Rule IX of the rules of practice unless such decision is waived:

It is further ordered, That in the event registrant does not appear personally or through a representative at the time and place herein set or as otherwise ordered, the Hearing Room Clerk shall file with the Records Officer of the Commission a written statement to that effect and thereupon the Commission will take the record under advisement for decision.

This order and notice shall be served on registrant personally or by registered mail forthwith, and published in the FEDERAL REGISTER not later than fifteen (15) days prior to July 1, 1953.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon the matter except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of section 4 (c) of the Administrative Procedure Act, it is not deemed to be subject to the provisions

of the section delaying the effective date of any final Commission action.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 53-5165; Filed, June 10, 1953;
8:50 a. m.]

R. J. VOSBURGH

ORDER FOR PROCEEDINGS AND NOTICE OF HEARING

In the matter of Ralph James Vosburgh, d/b/a R. J. Vosburgh, 211 North Fulton Avenue, Mt. Vernon, New York.

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 4th day of June 1953.

I. The Commission's public official files disclose that R. J. Vosburgh, hereinafter referred to as registrant, is registered as a broker-dealer pursuant to section 15 (b) of the Securities Exchange Act of 1934.

II. The Records Officer of the Commission has filed with the Commission a statement, a copy of which is attached hereto and made a part hereof,¹ stating that registrant did not file with the Commission reports of his financial condition during the calendar year 1952, as required by section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted thereunder.

III. The information reported to the Commission by its Records Officer as set forth in Paragraph II hereof tends, if true, to show that registrant violated section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted under said section.

IV. The Commission, having considered the aforesaid information, deems it necessary and appropriate in the public interest and for the protection of investors that proceedings be instituted to determine:

(a) Whether the statement referred to in Paragraph II hereof is true;

(b) Whether registrant has wilfully violated section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted under said section;

(c) Whether, pursuant to section 15 (b) of the Securities Exchange Act of 1934, it is in the public interest to revoke registration of registrant; and

(d) Whether, pursuant to section 15 (b) of the Securities Exchange Act of 1934, pending final determination, it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration of registrant.

V. *It is ordered*, That registrant be given an opportunity for hearing as set forth in Paragraph IV hereof on the 1st day of July 1953, at the main office of the Securities and Exchange Commission, located at 425 Second Street NW., Washington 25, D. C., before a Hearing Examiner to be designated by the Commission. On such date the Hearing Room Clerk in Room 193, North Building, will advise the parties and the Hear-

¹ Filed as part of the original document.

ing Examiner as to the room in which such hearing will be held. The Commission will consider any motion with respect to a change of place of said hearing if said motion is filed with the Secretary of the Commission on or before June 29, 1953. Upon completion of any such hearing in this matter the Hearing Examiner shall prepare a recommended decision pursuant to Rule IX of the rules of practice unless such decision is waived:

It is further ordered, That in the event registrant does not appear personally or through a representative at the time and place herein set or as otherwise ordered, the Hearing Room Clerk shall file with the Records Officer of the Commission a written statement to that effect and thereupon the Commission will take the record under advisement for decision.

This order and notice shall be served on registrant personally or by registered mail forthwith, and published in the FEDERAL REGISTER not later than fifteen (15) days prior to July 1, 1953.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon the matter except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of section 4 (c) of the Administrative Procedure Act, it is not deemed to be subject to the provisions of the section delaying the effective date of any final Commission action.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 53-5159; Filed, June 10, 1953;
8:47 a. m.]

[File No. 54-111]

AMERICAN & FOREIGN POWER CO., INC., AND
ELECTRIC BOND AND SHARE CO.

ORDER RELEASING JURISDICTION OVER CERTAIN APPLICATIONS FOR ALLOWANCES IN PROCEEDINGS

JUNE 5, 1953.

The Commission on November 7, 1951, having issued its findings and opinion and order approving a plan for the reorganization of American & Foreign Power Company, Inc. ("Foreign Power"), a registered holding company subsidiary of Electric Bond and Share Company ("Bond and Share") also a registered holding company, pursuant to section 11 (e) of the Public Utility Holding Company Act of 1935; and said order having reserved jurisdiction over the payment of fees and expenses incurred in connection with the plan proceedings; and said plan having since been consummated and carried out in accordance with its terms; and

Applications, and amendments thereto, having been filed for payment of fees and

reimbursement of expenses for services rendered in said proceedings; and

Foreign Power and Bond and Share having stated that they are prepared to pay the amounts for fees and expenses hereinafter set forth, being the amounts requested by such persons specifically hereinafter named; and

To be paid by foreign power	Fees	Expenses	Total
Reid & Priest, counsel for Foreign Power.....	\$210,000.00	\$13,901.51	\$223,901.51
White & Case, independent counsel to Foreign Power.....	200,000.00	2,674.23	202,674.23
Willkie, Owen, Farr, Gallagher & Walton, counsel for prospective purchasers of 3½ percent debentures.....	12,000.00	71.54	12,071.54
McLean, Southard & Hunt, Maine counsel for Foreign Power.....	12,560.00	737.31	13,297.31
Bankers Trust Company, Exchange agent under the 1951 Plan.....	24,000.00	4,148.60	28,148.60
Haskins & Sells, accounting services to Foreign Power.....	25,550.00		25,550.00
Ebasco Services, Inc., technical services to Foreign Power.....	14,589.10		14,589.10
Berdell Committee for the \$7 and \$6 Preferred Stock of Foreign Power:			
Estate of M'Cready Sykes; Stewart & Shearer; H. H. Klein, Counsel for the Committee.....	125,000.00	8,601.90	133,601.90
Peter M. Sykes, Secretary.....	1,500.00		1,500.00
Carter Committee for the \$7 and \$6 Preferred Stock of Foreign Power:			
Berlack & Isaacs; Marshall, Bratter, Seligson & Klein; Brown, Field and McCarthy; Harold P. Seligson, Counsel to the Committee.....	55,000.00	2,917.46	57,917.46
Reis & Chandler, Inc. Financial Advisers to the Committee.....	50,000.00	1,403.19	51,403.19
C. Shelby Carter, Enos Curtin and Lloyd R. Dewey, members of the Committee.....	6,000.00	1,170.00	7,170.00
Robert S. Byfield, expert witness.....	500.00	25.00	525.00
Augustine P. Barranco, expert witness.....	500.00	53.36	553.36
Norman Johnson Group and Norman Johnson Committee for Second Preferred Stock:			
Frank & Gonnet and Albert J. Fleischmann, counsel.....	110,000.00	12,287.87	122,287.87
Nathaniel F. Glidden, member of the committee.....	2,500.00		2,500.00
Edward P. Moxey & Co., expert for the Norman Johnson Group.....	2,500.00	95.41	2,595.41
E. Ralph Sterling, expert for the Norman Johnson Committee.....	23,000.00		23,000.00
Leland S. Sprout, stockholder appearing pro se.....	7,500.00	1,547.73	9,047.73
To be paid by Bond and Share:			
Ebasco Services, Inc., consultant services to Bond and Share.....	115,174.06		115,174.06
Simpson Thacher & Bartlett, counsel to Bond and Share.....	205,000.00	11,213.36	216,213.36
John Jirgal, financial consultant to Bond and Share.....	25,000.00	4,520.73	29,520.73

¹ Includes \$16,707.19 to be paid to stockholders for reimbursements of advances.

² Includes \$2,000 to be paid to stockholders for advances.

It is ordered, That the jurisdiction heretofore reserved over the applications for allowances and reimbursement of expenses of the above named firms and persons be, and the same hereby is, released; and

It is further ordered and directed, That the fee of \$110,000 to be paid to Frank & Gonnet and Albert J. Fleischmann shall be allocated among such counsel on the basis of \$88,000 to Frank & Gonnet and \$22,000 to Albert J. Fleischmann.

It is further ordered and directed, That Foreign Power and Bond and Share pay the amounts set forth above to the persons named in full settlement of all claims for allowances and reimbursement of expenses of such persons and firms for services rendered in the section 11 (e) plan proceedings of Foreign Power; and

It is further ordered, That jurisdiction be, and the same hereby is, reserved over the applications for allowances and reimbursement of expenses made by Arnold R. Ginsburg, Thomas C. Egan, and Francis Logan, Counsel for the McKenna Committee for the Second Preferred Stock; Frank F. McKenna, William J. Hamilton, Jr., and George L. Stark, members of such committee; Otto O. Geiringer, counsel for a \$6 preferred stockholder; Joseph M. Kaufman, counsel for Ira Haupt & Co.; Israel Beckhardt, counsel for a common stock-

The Commission having considered the record herein and being of the view that such fees and expenses are reasonable and that an order should be entered releasing jurisdiction with respect thereto, and directing Foreign Power and Bond and Share to pay the following requested fees and expenses:

holder; George H. Losey; and Harry B. Spring.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 53-5158; Filed, June 10, 1953;
8:47 a. m.]

[File No. 54-111]

AMERICAN & FOREIGN POWER CO., INC., AND
ELECTRIC BOND AND SHARE CO.

ORDER RELEASING JURISDICTION OVER PAYMENT TO COUNSEL IN STOCKHOLDERS' DERIVATIVE ACTION

JUNE 5, 1953.

The Commission on November 7, 1951, having approved a plan of reorganization of American & Foreign Power Company, Inc. ("Foreign Power"), a registered holding company subsidiary of Electric Bond and Share Company ("Bond and Share") filed pursuant to section 11 (e) of the Public Utility Holding Company Act of 1935, and the Commission in said order having approved certain payments to the plaintiff, their attorneys and accountants in certain derivative stockholders' actions brought on behalf of Foreign Power against Bond and Share, and having reserved jurisdiction with respect to payments to be made on account of certain other derivative stockholders' actions as to which no

applications for allowances had been received; and

The record having been completed with respect to the application of Weinstein & Levenson, as counsel in the action of Harriett E. Weinstein et al v. Sosthenes Behn et al; and

Foreign Power having agreed to a payment of \$10,000 to the firm of Weinstein & Levenson, in full settlement of all amounts in such suit which sum plaintiffs, their attorneys, their accountants, and such other persons are entitled to receive from Foreign Power; and the Commission having received no objection to the payment of this amount:

It is ordered, That jurisdiction heretofore reserved over the amount payable by Foreign Power on account of the action of Harriett E. Weinstein et al v. Sosthenes Behn et al., be, and the same hereby is, release.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 53-5171; Filed, June 10, 1953;
8:51 a. m.]

[File Nos. 54-127, 59-3, 59-12]

ELECTRIC BOND AND SHARE CO. ET AL.

ORDER RELEASING JURISDICTION OVER CERTAIN APPLICATIONS FOR ALLOWANCES IN PROCEEDINGS

JUNE 5, 1953.

Various applications for allowance for services or for reimbursement of expenses in connection with Plan II-B of Electric Bond and Share Company ("Bond and Share"), a registered holding company, having been filed with the Commission, pursuant to jurisdiction previously reserved by the Commission, and a hearing having been held concerning such applications pursuant to notice of filing and order for hearing previously issued on October 10, 1952 (Holding Company Act Release No. 11531), which notice of filing and order for hearing set forth the amounts requested by the various applicants for such allowances; and

Certain of said applicants having amended their applications for fees and allowances, and one of such applications having been withdrawn; and

Bond and Share having stated that it is prepared to pay the amounts of fees and allowances hereinafter itemized, being the amounts requested by such persons specifically hereinafter named; and

The Commission having considered the applications on file and the amounts requested, and being of the opinion that the requested allowances as hereinafter itemized are reasonable, and that an order should be entered approving and directing the payment thereof by Bond and Share;

It is ordered, That the applications as filed, or as amended in certain instances, for services and reimbursements of expenses, in the following amounts be, and are hereby approved, and Bond and Share is directed to pay such amounts to the respective applicants:

Name and Capacity	Fees	Expenses	Total
Electric Bond and Share Company:			
Simpson Thacher & Bartlett, counsel for company	\$161,500.00	\$13,806.94	\$175,306.94
Drexel & Co., financial services, including expert testimony of Edward Hopkinson	45,000.00		45,000.00
Ebasco Services, Inc., financial studies, financial advice and preparation of documents	84,019.16		84,019.16
Reis & Chandler, financial expert	20,000.00	314.37	20,314.37
The First Boston Corporation, financial study	5,000.00		5,000.00
Stuberfield Committee for Preferred Stock Certificate Holders:			
Percival E. Jackson, counsel for committee	135,000.00	5,942.21	140,942.21
William Stuberfield, chairman of committee	2,500.00		2,500.00
Frank Honigman, Eugene E. Ormsten, members of committee	750.00		750.00
Others:			
Debevoise, Plimpton & McLean, counsel for John Hancock Mutual Life Insurance Company, preferred certificate holder	5,000.00	506.69	5,506.69

It is further ordered, That the reservation of jurisdiction heretofore made, be and is hereby continued with respect to the fees and expenses requested by Hawkins, Delafield & Wood, Counsel for the Cornell Preferred Stockholders Protective Committee, and by Paul J. Kern, counsel for certain \$5 preferred certificate holders, and that such applications shall be disposed of in accordance with the procedure heretofore directed.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 53-5170; Filed, June 10, 1953;
8:51 a. m.]

[File Nos. 54-193, 54-201]

UNITED GAS IMPROVEMENT CO.

SUPPLEMENTAL ORDER IN CONNECTION WITH SALE OF SHARES OF COMMON STOCK OF DELAWARE POWER & LIGHT CO.

JUNE 5, 1953.

The Commission having issued an order on June 15, 1951, pursuant to section 11 (b) (1) of the Public Utility Holding Company Act of 1935 ("act"), in proceedings concerning the United Gas Improvement Company ("UGI") which required, among other things, that UGI sever its relationship with certain therein named companies including Delaware Power & Light Company ("Delaware"), in any appropriate manner not in contravention of the provisions of the act and the rules and regulations promulgated thereunder, by causing the disposition of its direct and indirect ownership, control and holdings of securities issued by such companies; and

The Commission having, on September 18, 1952, issued its findings, opinion and order approving a comprehensive plan filed by UGI for the purpose of complying with the Commission's order of June 15, 1951, which, among other things, granted on extension of time to June 15, 1953 for UGI's compliance with the remaining provisions of said order of June 15, 1951; and

UGI having notified the Commission pursuant to Rule U-44 (c) promulgated under the act that in compliance with the aforementioned order it proposes as soon as practicable to sell on the New York Stock Exchange or the Philadelphia-Baltimore Stock Exchange 37,355 shares of the common stock of Delaware,

and no filing having been required by the Commission with respect to said sale; and

UGI having requested that the Commission issue an order conforming to the requirements of Supplement R and section 1808 (f) of the Internal Revenue Code, as amended; and

It appearing appropriate to the Commission that an order, as requested, should issue:

It is ordered and recited, That the sale by the UGI of 37,355 shares of common stock of Delaware Power & Light Company from time to time on the New York Stock Exchange or Philadelphia-Baltimore Stock Exchange and the transfer and delivery of such shares in connection with such sales is necessary or appropriate to the integration or simplification of the holding company system of which UGI is a member, and is necessary or appropriate to effectuate the provisions of section 11 (b) of the Public Utility Holding Company Act of 1935 in accordance with the meaning and requirements of the Internal Revenue Code, as amended, and section 1808 (f) and Supplement R thereof.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 53-5169; Filed, June 10, 1953;
8:51 a. m.]

[File No. 70-2987]

NIAGARA MOHAWK POWER CORP.

ORDER RELEASING JURISDICTION OVER FEES AND EXPENSES

JUNE 5, 1953.

The Commission, by order dated February 9, 1953, and by supplemental order dated February 18, 1953 having granted the application, as amended, of Niagara Mohawk Power Corporation ("Niagara Mohawk"), a public utility company and an exempt holding company, of which the United Corporation, a registered holding company, owned, as of January 15, 1953, 9.48 percent of the outstanding voting securities, with respect to the issue and sale by Niagara Mohawk, pursuant to the competitive bidding requirements of Rule U-50, of \$25,000,000 principal amount of General Mortgage Bonds, 3½ percent Series, due February 1, 1983, and 1,000,000 shares of its common capital stock without par value; and

The said order and supplemental order having reserved jurisdiction with respect to all fees and expenses; and

The record having been completed with respect to these matters reflecting fees and expenses aggregating \$234,915 for the bonds and \$114,916 for the common stock which includes fees to LeBoeuf, Lamb and Leiby (counsel for Niagara Mohawk) in the amount of \$11,500 for the bonds and \$15,000 for the stock and to Harriman, Ripley & Co. (financial advisers for Niagara Mohawk) in the amount of \$2,000 for the bonds and \$10,000 for the stock; and

It appearing that, in addition, fees in the amount of \$8,000 for the bonds and \$8,000 for the stock and expenses of \$468.27 are to be paid Simpson, Thacher & Bartlett, independent counsel for the purchasers, by the purchasers;

The Commission having examined the record herein and finding that the fees and expenses, as proposed, are not unreasonable, and that it is appropriate to release jurisdiction with respect thereto:

It is hereby ordered, That jurisdiction heretofore reserved with respect to fees and expenses herein be, and the same hereby is, released.

By the Commission.

[SEAL] ORVAL L. DuBois,
Secretary.

[F. R. Doc. 53-5168; Filed, June 10, 1953;
8:50 a. m.]

[File No. 70-3062]

HEVI DUTY ELECTRIC CO.

ORDER PERMITTING EXTENSION OF BANK
LOAN NOTE FOR ONE YEAR

JUNE 5, 1953.

Hevi Duty Electric Company, a non-utility company which is a subsidiary of the North American Company, a registered holding company, having filed an application pursuant to section 6 (b) of the Public Utility Holding Company Act of 1935 ("act"), with respect to the following proposed transaction:

By order dated June 30, 1952 (Holding Company Act Release No. 11358), this Commission entered its order permitting Hevi Duty to borrow from the Chemical Bank & Trust Company of New York the sum of \$300,000 at an interest rate of 3 percent per annum, such borrowing to be evidenced by an unsecured promissory note to extend for a period of six months with the privilege on the part of the company to renew such loan for an additional six-month period. Pursuant to order of this Commission dated December 22, 1952, the due date of said note has been extended to July 2, 1953. The present application states that because the company's need for working funds still continues it is now proposed that such bank loan be renewed in the same principal amount at an interest rate of 3½ percent for a further period of one year. No fees, commissions or other remuneration are to be paid to any third person in connection with the proposed transaction.

The Company states that no regulatory commission other than this Com-

mission has jurisdiction over the proposed transaction.

The applicant has requested that the Commission's order herein become effective upon issuance.

Due notice having been given of the filing of the application, and a hearing not having been requested or ordered by the Commission; and the Commission finding that the applicable provisions of the act and the rules promulgated thereunder are satisfied, and deeming it appropriate in the public interest and the interest of investors and consumers that said application be granted forthwith:

It is ordered, Pursuant to Rule U-23 and the applicable provisions of the act, that said application be, and it hereby is, granted forthwith, subject to the terms and conditions prescribed in Rule U-24.

By the Commission.

[SEAL] ORVAL L. DuBois,
Secretary.

[F. R. Doc. 53-5167; Filed, June 10, 1953;
8:50 a. m.]

[File No. 70-3084]

DUQUESNE LIGHT CO.

NOTICE OF FILING REGARDING ISSUANCE OF
SHORT-TERM BANK LOAN NOTES

JUNE 5, 1953.

Notice is hereby given that a declaration has been filed with this Commission by Duquesne Light Company ("Duquesne"), a public utility subsidiary of Philadelphia Company, a registered holding company. Declarant has designated section 7 of the act and Rule U-23 promulgated thereunder as applicable to the proposed transactions, which are summarized as follows:

Duquesne presently has outstanding two short-term bank loan notes having an aggregate principal amount of \$4,750,000, bearing interest at 3% and maturing on December 16, 1953. It intends, prior to June 15, 1953, to issue further bank loan notes in the aggregate principal amount of \$6,150,000 under the exemption asserted to be available to it pursuant to section 6 (b) of the act, whereupon its short-term bank loan indebtedness will aggregate \$10,900,000. Duquesne proposes in the instant declaration to issue, prior to July 30, 1953, further bank loan notes in the aggregate principal amount of \$2,500,000. Such notes are to be issued to Mellon National Bank and Trust Company, Pittsburgh, Pennsylvania, will mature on December 16, 1953, and will bear interest at not more than the prime rate on short-term bank borrowings at the date of issuance. Duquesne will have the right to prepay such notes at any time prior to maturity without premium. It is proposed to use the proceeds from such notes to defray part of the company's current construction program involving estimated net expenditures of \$36,000,000 for the year 1953. Declarant states that it intends on or before their maturity to pay off all outstanding short-term notes with the proceeds derived from a permanent financing program now being formulated. It is stated that no fees or ex-

penses will be incurred in connection with the proposed transactions other than miscellaneous expenses, estimated not to exceed \$100.

Declarant states that no State Commission has jurisdiction over the proposed transactions and has requested that the Commission's order herein become effective upon issuance.

Notice is further given that any interested person may, not later than June 22, 1953, at 5:30 p. m., request the Commission in writing that a hearing be held on such matter, stating the reasons for such request, the nature of his interest and the issues of fact or law raised by said declaration which he desires to controvert or request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time thereafter said declaration, as filed or as amended, may be permitted to become effective as provided in Rule U-23 of the rules and regulations promulgated under the act, or the Commission may exempt such transactions as provided in Rule U-20 (a) and Rule U-100 thereof.

By the Commission.

[SEAL] ORVAL L. DuBois,
Secretary.

[F. R. Doc. 53-5166; Filed, June 10, 1953;
8:50 a. m.]

INTERSTATE COMMERCE COMMISSION

[4th Sec. Application 28145]

PAPER AND PAPER ARTICLES FROM SOUTH-
WEST TO OFFICIAL AND ILLINOIS TERRI-
TORIES

APPLICATION FOR RELIEF

JUNE 8, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: F. C. Kratzmeir, Agent, for carriers parties to his tariff ICC No. 3959. Commodities involved: Paper and paper articles, carloads.

From: Points in the Southwest.

To: Points in official and Illinois territories.

Grounds for relief: Competition with rail carriers, circuitous, to maintain grouping.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary

before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Acting Secretary.

[F. R. Doc. 53-5183; Filed, June 10, 1953;
8:54 a. m.]

[4th Sec. Application 28146]

VARIOUS COMMODITIES FROM SOUTHERN
TERRITORY TO SOUTHERN, OFFICIAL, IL-
LINOIS AND WESTERN TRUNK-LINE TER-
RITORIES

APPLICATION FOR RELIEF

JUNE 8, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: R. E. Boyle, Jr., Agent, for carriers parties to schedules listed in exhibit A of the application, pursuant to fourth section order No. 17220.

Commodities involved: Various commodities.

From: Points in southern territory.

To: Points in southern, official, Illinois, and western trunk-line territories.

Grounds for relief: Competition with rail carriers, circuitous routes.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Acting Secretary.

[F. R. Doc. 53-5184; Filed, June 10, 1953;
8:54 a. m.]

[4th Sec. Application 28147]

REFINED SULPHUR FROM ROSENBERG, TEX.,
TO THE SOUTH

APPLICATION FOR RELIEF

JUNE 8, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: F. C. Kratzmeir, Agent, for carriers parties to schedule listed below.

No. 113—8

Commodities involved: Sulphur, refined, carloads.

From: Rosenberg, Tex.

To: Points in southern territory.

Grounds for relief: Competition with rail carriers, circuitous, to maintain grouping, to apply rates constructed on the basis of the short line distance formula, additional origin.

Schedules filed containing proposed rates: F. C. Kratzmeir, Agent, ICC No. 4020, suppl. 30.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Acting Secretary.

[F. R. Doc. 53-5185; Filed, June 10, 1953;
8:54 a. m.]

[4th Sec. Application 28148]

RICE FROM BATON ROUGE AND NEW
ORLEANS, LA., TO MILWAUKEE, WIS.

APPLICATION FOR RELIEF

JUNE 8, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: E. P. Emerson, Jr., Agent, for The Kansas City Southern Railway Company and other carriers named in the application.

Commodities involved: Rice and rice products, carloads.

From: Baton Rouge and New Orleans, La.

To: Milwaukee, Wis.

Grounds for relief: Competition with rail carriers, circuitous routes.

Schedules filed containing proposed rates: W. P. Emerson, Jr., Agent, ICC No. 386, suppl. 34.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without

further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Acting Secretary.

[F. R. Doc. 53-5186; Filed, June 10, 1953;
8:54 a. m.]

[4th Sec. Application 28149]

SAND, GRAVEL AND CRUSHED STONE FROM
ILLINOIS TO SOUTHWESTERN AND WEST-
ERN TRUNK-LINE TERRITORIES

APPLICATION FOR RELIEF

JUNE 8, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: F. C. Kratzmeir, Agent, for carriers parties to schedule listed below.

Commodities involved: Sand, gravel, crushed stone and related articles, carloads.

From: Points in Illinois.

To: Points in southwestern and western trunk-line territories.

Grounds for relief: Competition with rail carriers, circuitous routes, to apply rates constructed on the basis of the short line distance formula.

Schedules filed containing proposed rates: F. C. Kratzmeir, Agent, ICC No. 3736, suppl. 223.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Acting Secretary.

[F. R. Doc. 53-5187; Filed, June 10, 1953;
8:54 a. m.]

[4th Sec. Application 28150]

SULPHURIC ACID FROM BARTLESVILLE,
OKLA., TO FORT SMITH, ARK.

APPLICATION FOR RELIEF

JUNE 8, 1953.

The Commission is in receipt of the above-entitled and numbered applica-

tion for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: F. C. Kratzmeir, Agent, for carriers parties to schedule listed below. Commodities involved: Sulphuric acid, in tank-car loads.

From: Bartlesville, Okla.

To: Fort Smith, Ark.

Grounds for relief: Competition with rail carriers, circuitous routes.

Schedules filed containing proposed rates: F. C. Kratzmeir, Agent, ICC No. 3919, suppl. 168.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Acting Secretary.

[F. R. Doc. 53-5188; Filed, June 10, 1953;
8:54 a. m.]

[4th Sec. Application 28151]

VARIOUS COMMODITIES FROM TRUNK LINE
AND NEW ENGLAND TERRITORIES TO OF-
FICIAL AND SOUTHERN TERRITORIES

APPLICATION FOR RELIEF

JUNE 8, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: C. W. Boin, and I. N. Doe, Agents, for carriers parties to schedules named in exhibit A of the application, pursuant to fourth section order No. 17220.

Commodities involved: Various commodities.

From: Points in trunk-line and New England territories.

To: Points in official and southern territories.

Grounds for relief: Competition with rail carriers, circuitous routes.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Acting Secretary.

[F. R. Doc. 53-5189; Filed, June 10, 1953;
8:55 a. m.]

[4th Sec. Application 28152]

GRAIN FROM OKLAHOMA TO BRINKLEY,
ARK., AND MEMPHIS, TENN.

APPLICATION FOR RELIEF

JUNE 8, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: F. C. Kratzmeir, Agent, for the St. Louis-San Francisco Railway Company and other carriers named in the application.

Commodities involved: Grain, grain products and related articles, carloads.

From: Points in Oklahoma.

To: Brinkley, Ark., and Memphis, Tenn.

Grounds for relief: Competition with rail carriers, circuitous routes.

Schedules filed containing proposed rates: F. C. Kratzmeir, Agent, ICC No. 3829, suppl. 25.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved

in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Acting Secretary.

[F. R. Doc. 53-5190; Filed, June 10, 1953;
8:55 a. m.]

[4th Sec. Application 28153]

CEMENT FROM LEEDS, ALA., TO ALBANY AND
DOSAGA, ALA.

APPLICATION FOR RELIEF

JUNE 8, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: R. E. Boyle, Jr., Agent, for the Atlantic Coast Line Railroad Company and Southern Railway Company.

Commodities involved: Cement and related articles, carloads.

From: Leeds, Ala.

To: Albany and Dosaga, Ga.

Grounds for relief: Competition with rail carriers, circuitous routes, additional routes.

Schedules filed containing proposed rates: C. A. Spaninger, Agent, ICC No. 1244, suppl. 44.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Acting Secretary.

[F. R. Doc. 53-5191; Filed, June 10, 1953;
8:55 a. m.]



